Supreme Court, U.S.
FILED
JUL 13 2006
OFFICE OF THE CLERK

1

No. 06-781

IN THE

United States Supreme Court

SARAH HENDRIX,

Petitioner.

v.

HENRY PAULSON, SECRETARY OF THE DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, RICHARD BYRD, MICHAEL MCBRIDE, JOHN BUTKOVICH, WANDA EDMONDSON, TY AYRES and WILLIAM ZACHERY,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the 11th Circuit

PETITION FOR WRIT OF CERTIORARI

Sarah Hendrix
Pro Se
134 Summerset Lane
Atlanta, GA 30328
(770) 396-0716 (phone/fax)

July 12, 2006
Revised September 17, 2006
Revised November 22, 2006

Robert David Powell
Lori M. Bernek
US Attorney
Northern District GA
75 Spring Street, S.W.
600 U.S. Courthouse
Atlanta, GA 30303
(404) 581-6004
(404) 581-6350

QUESTION PRESENTED

1. Whether the aggressive use of summary judgment and the arbitrary manipulation of procedures in Title VII discrimination cases is denying plaintiffs their Constitutional Right to their 'day in court' under the Seventh Amendment and, therefore, in the instant case, allowing powerful Internal Revenue Service employees the ability to continue their illegal activities without any repercussion.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 14.1, the following list identifies all of the parties Appearing here and in the court below. The Petitioner here and in the United States Court of Appeals for the 11th Circuit is Sarah Hendrix. The Respondents here and in the United States Court of Appeals for the 11th Circuit are Henry Paulson, Secretary of the Department of the Treasury of the United States of America, Richard Byrd, Michael McBride, John Butkovich, Wanda Edmundson, Ty Ayres, and William Zachery in their official capacity and Richard Byrd, Michael McBride, John Butkovich, Wanda Edmundson, Ty Ayres, and William Zachery in their unofficial capacity.

Pursuant to Rule 29.6, Petitioner states that no parties are corporations.

PRO SE STATEMENT

Ms. Hendrix apologizes to the Court for bringing this Writ without being properly represented by counsel. However, it has been difficult to find an attorney who is not personally vulnerable to enticements made by the Internal Revenue Service. It is Ms. Hendrix's belief that two of her previous counsels were so vulnerable. In fact, one former counsel has acknowledged in a recorded conversation with Ms. Hendrix the *quid pro quo* that he accepted from the IRS to the detriment of his representation of her. Ms. Hendrix submitted that information in affidavits to the District Court. [CR.56, CR.253]. Ms. Hendrix has discussed her case with two (2) different reputable attorneys with expertise in employment law who are willing to take her case to trial if it is remanded back to the District Court. Ms. Hendrix is well aware of the perils of representing herself at trial and would not make that mistake.

TABLE OF CONTENTS

Page No.

Question Presented i

Parties to the Proceeding and Corporate Disclosure Statement ii

Pro Se Statement ii

Table of Contents iii

Table of Authorities iv

Petition for Writ of Certiorari 1

Opinions Below 1

Statement of Jurisdiction 1

Constitutional and Regulatory Provisions Involved 1

Statement of the Case 2

Reasons for Granting the Writ 14

Review is Warranted by the Important Interests at Stake 27

Conclusion 28

TABLE OF AUTHORITIES

Cases: **Page No.**

Adams v. Campbell County School District, 483 F.2d 1351 (10th Cir. 1973) 21

Alioto v. Marshall Field's & Co., 77 F.3d at 936 26

C.B. Trucking, Inc. v. Waste Mgmt., Inc., 137 F.3d 41, 44 (1st Cir. 1998) 26

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 15, 16

Dayco, 523 F.2d at 393. 25

Donaldson v. Clark, 819 F.2d 1551 (11th Cir. 1987) (en banc) 22

Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985) 22

Herron v. Beck, 693 F.2d 125 23

Iadimarco v. Runyon, 190 F.3d 151. 17

Jones v. Auto Ins. Co. of Hartford, Conn., 917 F.2d 1528 (11th Cir. 1990) 21, 25

Marine Coatings, 792 F.2d at 1568 22

McCormick v. District of Columbia, 554 F. Supp. 640. . . . 17

Page No.

McGarry v. Board of County Comm'rs, 175 F.3d 1193 (10th Cir. 1999) 18

Milburn v. United States, 734 F.2d 762, (11th Cir. 1984). 22

Parks v. Marco-Dynamics, Inc. 121 Ariz. 517 21

Plante v. Shivar, 540 F.2d 1233 (4th Cir. 1976) 21

Portland Retail Druggists Ass'n v. Kaiser Found. Health Plan 662 F.2d 641, 645 (9th Cir. 1981) 26

Property Management & Investments, Inc., 752 F.2d at 606 22

Rockefeller Ctr. Props., 184 F.3d 280, 287 (3d. Cir. 1999) 24

San Pedro Hotel Co. v. City of Los Angeles 159 F.3d 470, 477 (9th Cir. 1998) 26

Sawyer v. Russo, 19 FEP 44 (D.D.C. 1979) 18

Wilson-Cook, 942 F.2d 247. 22

RULES:

Fed. R. Civ. P. 12(b) 1, 15, 20-22, 24-25

Fed. R. Civ. P. 56(c). 2, 15-16, 21

Fed. R. Civ. P. 56(f). 21

Page No.

STATUTES:

U.S. Constitution Amend. VII. 14

2 U.S.C. § 2000e-3(a) 8

5 U.S.C. 1221 9

42 U.S.C. 1985 (1), ... 9

APPEDIXES:

A. 2/08/05 Court of Appeals Order

B. 2/22/05 District Court Order

C. 4/14/06 Court of Appeals Rehearing Request Decision

D. 5/31/06 Petition for Rehearing En Banc

E. 6/01/06 Court of Appeals Letter

F. 6/15/06 Court of Appeals Letter

G. District Court Doc. 243 – Material Facts Over Which Plaintiff Contends There is a Genuine Issue to be Tried

H. District Court Doc 253 – Plaintiff's Affidavit Providing Additional Information

I. Ms. Hendrix's January 3, 2005 Affidavit

J. U.S. District Court Certificate of Readiness of Record and Civil Docket

PETITION FOR WRIT OF CERTIORARI

Petitioner, Ms. Sarah Hendrix, respectfully petitions this Court for a Writ of Certiorari to review the judgment rendered in this case by the 11th Circuit Court of Appeals.

OPINIONS BELOW

The order of the court of appeals is unreported [Appendix ("App.") A]. The opinion of the district court is unreported [App. B]

STATEMENT OF JURISDICTION

The 11th Circuit Court of Appeals entered its order February 8, 2006. The 11th Circuit denied Petitioner's Petition for Rehearing on April 14, 2006 and her Petition for Rehearing En Banc on June 15, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The jurisdiction of the court of appeals was invoked under 28 U.S.C. § 1291. The jurisdiction of the district court was invoked under 28 U.S.C. § 1331.

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

The Seventh Amendment provides that "[i]n Suits at common law, ..., the right of trial by jury shall be preserved."

Fed. R. Civ. P. 12(b) states that when matters outside the pleading are presented to and not excluded by the court, a motion to dismiss "shall be treated as one for summary judgment and disposed of as provided in Rule 56."

Fed. R. Civ. P. 56(c) states that a motion for summary judgment "shall be served at least 10 days before the time fixed for the hearing."

Fed. R. Civ. P. 56(c) states "The judgment sought shall be rendered forthwith, if the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

STATEMENT OF THE CASE

A. Ms. Hendrix's Termination

Ms. Sarah Hendrix (White female), Petitioner/Appellant/ Plaintiff ("Ms. Hendrix") was employed by the Internal Revenue Service ("IRS") as an International Examiner ("IE") at the Manhattan District of the IRS, where she performed with documented excellence for close to three years.

Within one month of Appellants' transfer to the Atlanta District of the IRS in January 1994, the individually named Respondents/Appellees/Defendants ["Respondent Edmundson" (Black female), "Respondent Zachery" (Black male), and "Respondent McBride" (Black male)] conspired to undermine Ms. Hendrix's professional and personal reputation in order to justify giving an IE position to their pre-selected unqualified Black candidate, Mr. Brian Word ("Mr. Word") who:

1) Was NOT a CPA as other candidates and Ms. Hendrix are.

2) Had NO International tax training either inside or outside the Internal Revenue Service as Ms. Hendrix did (Ms. Hendrix had 1 year of International Tax at Pace University, NY, NY and the full 16 weeks of internal IRS international tax training).

3) Had NO International tax experience as Ms. Hendrix did (Ms. Hendrix was an International Tax Manager at CitiBank).

4) Had NOT previously held the IE position as Ms. Hendrix had [Ms. Hendrix was an IE in the Manhattan District of the IRS from 1991-1993].

Their unqualified Black candidate, Mr. Word, was placed in the IE position one (1) month *before* the position was officially announced for competition for other IRS employees. Ms. Hendrix provided the District Court with proof of the pre-selection attached as Exhibit # P 24 to Ms. Hendrix's January 3, 2005 Affidavit ("Affidavit") submitted with Plaintiff's Response(s) to Defendant's Motions to Dismiss [CR 238 - CR 240].

Respondent Zachery signed the IRS Form # 52, Request for Personnel Action, transferring Mr. Word into the IE position on November 18, 1994. [Affidavit, Exh.# P 24, CR 238 - CR 240]

The opening date of the Vacancy Announcement for the IE position was December 27, 1994 and the closing date was January 10, 1995 [Affidavit, Exh.# P 23, CR 238 - CR 240].

The same Individual Respondents then rigged the competition by using an Alternative Ranking System to insure

that their unqualified candidate was ranked as 'best qualified' for the IE position. The Federal Labor Relations Authority concluded in an October 31, 1996 decision, that the Alternative Ranking System was incorrectly used by the IRS when ranking the IE position and when determining that Word was the best-qualified individual for the position. [Affidavit, Exh # P-88, CR 238 - CR 240].

The Individual Respondents continued on a pattern of discriminatory, retaliatory, illegal and unethical conduct until Ms. Hendrix's wrongful, retroactive termination in January 1998 effective December 1997. This conduct included, but is not limited to, participating in several *quid pro quo's* and giving away over $2,300,000 of the American taxpayer's money in exchange for negative letters and reports about Ms. Hendrix. Ms. Hendrix provided proof to the District Court of two (2) such *quid pro quo's* identified as Taxpayer # 4 (attached as an Affidavit to Ms. Hendrix's May 4, 2001 Motion for Reconsideration) [CR 56]) and Taxpayer # 1 (Affidavit, Plaintiff's Response to Motion(s) to Dismiss [CR 238 - CR 240])

The Individual Respondents actions over a four-year period resulted in the devastation of Ms. Hendrix's mental health and the ruin of her professional and personal reputation. The hostile environment was memorialized in a March 1996 note to Ms. Hendrix from a fellow IRS employee that stated:

> "It's a shame that you have to do that. She [meaning Respondent Edmundson] really means war. It's awful to be under such scrutiny [sic]. I had no idea that it was at that point. Nevertheless, remember God is still in control and he is the final judge and the only one you should fear" [Affidavit, Exhibit # P-6, CR 238 – CR 240].

The other three (3) Individual Respondents ["Respondent Byrd" (Black male), "Respondent Ayres" (Black male) and

"Respondent Butkovich" (White male)] participated in a cover up of the other Respondent's illegal, unethical and discriminatory conduct. This cover up included lying to US Senator Coverdell during the congressionally ordered investigation of their illegal actions. [Affidavit, Exh.# P 96, P 97, CR 238 - CR 240]

Before litigation commenced, Ms. Hendrix filed:

One (1) Complaint with the National Labor Relations Authority ("NLRA") [**# AT-CA-60521**]

Four (4) EEO Complaints: (**1**) [**# 96-2290**, June, 1996 – Listed 18 different specific instances of discriminatory and retaliatory conduct. Coincidentally, Respondent McBride signed the Form # 52, Request for Personnel Action removing Mr. Word from the IE position on August 23, 1996, two (2) weeks after EEO Complaint # 1 [# 96-2290] went formal on August 9, 1996. [Affidavit, Exh. # P-30, CR 238 –CR 240], (**2**) [**# 97-1320**, May, 1997 – Alleged age, race and sex discrimination and the interference of the investigation ordered by Congress of those illegal actions by Respondent Butkovich, Respondent McBride and Respondent Ayres], (**3**) [**# 97-1372**, October, 1997 – Alleging retaliation and proposed termination adverse action by Respondent McBride who issued a "60 day Opportunity" Adverse Action Letter], and (**4**) Ms. Hendrix filed a fourth (4th) EEO Complaint after her termination [**# 98-1171**, February, 1998 -Citing wrongful termination].

One (1) Complaint with the Office of Special Counsel [**# MA-97-1972**, August, 1997]

[Affidavit, Exhibits # P-60, P-66, P-105, P-107, P-125 and P-128 CR 238 - CR 240]

During 1996 – 1998, Ms. Hendrix, provided information about the Individual Respondents illegal conduct to Senator Trent Lott, Senator Paul Coverdell, Representative Newt Gingrich, Representative Max Cleland and Representative Nancy L. Johnson who states in a August 23, 1996 letter to Mr. Gary Bell, Internal Inspection, IRS:

"Ms. Hendrix has made serious allegations about her group manager, Ms. Wanda Edmundson. In brief, Ms. Hendrix believes that Ms. Edmundson has manufactured complaints about Ms. Hendrix's job performance in order to "get rid" of Ms. Hendrix. Ms. Edmundson's conduct allegedly includes making adjustments to assessments which Ms. Hendrix has made against taxpayers she has audited... Ms. Hendrix believes that Ms. Edmundson has systematically set about to destroy Ms. Hendrix's career and, in doing so, at a minimum has violated IRS ethical standards and may have gone so as to violate tax laws. Ms. Hendrix has also indicated that she has brought this information to senior officials in the Atlanta District, but she does not believe that there has been a fair and impartial investigation of this matter. I consider Ms. Hendrix's allegations to be very serious and hereby request an internal audit of this matter." [Affidavit, Exhibit # P-75, CR 238 - CR 240].

It is this letter that finally started the investigation ordered by Congress that Respondent Butkovich, Respondent McBride, Respondent Ayres, and Respondent Byrd intervened in order to cover their illegal activities. The coverup was the subject of Ms. Hendrix's second EEO Complaint [# 97-1320].

Respondent Ayres misrepresented Respondent McBride's position at the IRS to Senator Coverdell's office by stating that Respondent McBride (an individual named in Ms. Hendrix's first EEO complaint, an examination division Branch Chief and Respondent Edmundson's direct line manager) was handling the investigation of the illegal actions. In a May 13, 1996 letter to Senator Coverdell, Respondent Ayres stated:

"This is in response to your inquiry on behalf of Ms. Sarah Hendrix who expressed concern regarding her employment with the IRS. This matter has been referred to our Internal Security Division, which has responsibility for investigating such items. If you or your constituent have any further questions **please contact Michael A. McBride**." [Affidavit, Exhibit # P-67, CR.238, CR.239 and R.240].

A January 27, 1997 letter from Senator Coverdell to Respondent McBride states:

"Enclosed please find additional information received from Ms. Sarah Hendrix regarding ongoing investigations regarding herself and a supervisor. It is requested that this new information be given appropriate consideration when evaluating her case." [Affidavit, Exhibit # P-97, CR 238 - CR 240].

Thus, Respondent McBride, was "handling" the investigation of his as well as Respondent Zachery's and Respondent Edmundson's illegal actions. An October 10, 1997 letter from the U.S. Office of Personnel Management to Senator Trent Lott states:

"Ms. Hendrix, ...alleges that the IRS has instituted an official policy against whites that resulted in her non-selection for a position as an International Examiner, ..., the position in Atlanta was given to an African-American who was less qualified than she, ...Your letter to OPM appears to have a well-documented and credible inquiry worthy of review" [Affidavit CR 238 – CR 240].

In 1997, the IRS Affirmative Action Program ERR-16 was declared unconstitutional by a Louisiana District Court.

The decision states "To bolster management's accountability, ERR-16 recommends that as part of the annual performance evaluation each manager efforts towards implementation of ERR-16 be monitarly rewarded and lack of such efforts be punished." [Affidavit, Exh.# P 129, CR 238 - CR 240]

From 1996 through 1998, Ms. Hendrix also provided information about the Individual Respondent's illegal actions to the Department of Treasury Inspector General's office. Ms. Hendrix spoke at Rep. Newt Gingrich's public forum (an event documented in the Atlanta Journal & Constitution) and to other news media [Affidavit, Exh. # P-133 CR 238 – CR 240].

On October 10,1997 Appellant was placed on administrative leave. On November 28, 1997, Appellant filed the Original Complaint in this action after receiving a right to sue letter from the EEOC. On December 27, 1997 Ms Hendrix wrote to IRS Acting Commissioner Michael Dolan in a last ditch attempt to inform IRS management of the illegal actions of the Individual Respondents. On January 10, 1998, Ms. Hendrix was retroactively fired effective December 29, 1997.

B. Proceedings Below

1. Filing of Suit. On November 28, 1997, Ms. Hendrix filed the Original Complaint in this action. The Complaint stated claims describing a continuing pattern of discriminatory and retaliatory acts [Count 1 & 2 – Title VII Discrimination and Retaliation 2 U.S.C. § 2000e-3(a)] and named the Secretary of the Treasury as the only defendant [CR.1]. Once Ms. Hendrix received notification that she was retroactively fired effective December 29, 1997 she then filed a fourth (4th) EEO Complaint [**# 98-1171**, February, 1998 – citing wrongful termination]. On July 20, 1998 Ms. Hendrix's Motion to Amend Complaint ("First Amendment") adding wrongful termination to the retaliation claim was granted and filed by order of the Court. [CR.11].

On January 29, 2001, Ms. Hendrix filed a Motion to File a Second Amendment to the Complaint ("Second Amendment") that added six (6) Individual Defendants (Respondents

Edmundson, McBride, Zachery, Ayres, Butkovich and Byrd) and three (3) additional Claims [Count 3 – Violation of the Whistleblower Protection Act 5 U.S.C. 1221, Count 4 – Conspiracy to Interfere with Civil Rights 42 U.S.C. 1985 (1), and Count 5 – Intentional Infliction of Emotional Distress, CR.52]. After several motions filed by US Attorney Powell, the Court found the Second Amendment to be *timely filed* and granted it on August 13, 2001 [CR.76].

On January 23, 2003 the Clerk of the District Court found the Individual Respondents to be in DEFAULT because, some seventeen (17) months after the filing, they had still not filed answers to the Second Amendment [CR.103]. Once they were found to be in default, instead of filing an answer, the very next day (on January 24, 2003) the Individual Respondents filed five (5) Motions to Dismiss or Summary Judgment (one for each Respondent except Respondent Byrd who falsely claimed that he had not been served) [CR 104 – CR 108]. On February 10, 2003, Ms. Hendrix filed a Motion for a Third Amendment to the Complaint ("Third Amendment") to correct a pleading technicality in the Second Amendment. On June 27, 2003 the Respondents "renewed" their Motions to Dismiss [CR 146]. On July 2, 2003, Magistrate Judge Joel Feldman RETROACTIVELY granted the Individual Respondents Motions to Dismiss effective June 20, 2003 [CR 147, CR 151].

Over a year later, on July 30, 2004, District Court Judge Story VACATED Magistrate Judge Feldman's decision to Dismiss (Judge Feldman had based his decision on misrepresentations made by US Attorney Powell) and AGAIN granted the Second Amendment [CR 165]. The Court also granted the Third Amendment. On September 23, 2004 some three (3) years after the Second Amendment was first granted, the Individual Respondents finally filed cursory answers to the

Amendments [CR 190 – CR 196].

During September of 2004, Ms. Hendrix's counsel, Mr. Darrin Keaton ("Keaton") informed Ms. Hendrix that he was receiving notices from the IRS about his personal taxes. Ms. Hendrix, although she did not see the contents of the IRS notices, directed Keaton on how to respond to them.

Final discovery ended on October 28, 2004. On November 2, 2004, *five days after the close of discovery*, the Individual Respondents filed the Notice of Substitution of United States as Defendant for Tort Claims against Individual Capacity Defendants ("Notice of Substitution") [CR 205]. On November 23, 2004, Ms. Hendrix filed a response to the Notice of Substitution and a Motion for Hearing and/or De Novo Review of Defendant's Notice of Substitution of United States as Defendant for Tort Claim [CR 206, CR 214]. The next day, on November 24, 2004, the Respondents filed a Motion of the United States to Dismiss or for Summary Judgment [CR 207] and on November 26, 2004, for Defendant John Snow [CR 209] and for Defendants Ty Ayers, John Butkovich, Richard Byrd, Wanda Edmundson, Michael McBride and William Zachery [CR 211].

On January 7, 2005, Ms. Hendrix filed a Response to each of the Motions as well as three (3) different Responses to Defendant John Snow [CR.239], United States [CR.238] and Individual Defendants [CR.240] Statement of Material Facts Not In Dispute (Material Facts Over Which Plaintiff Contends There Exists A Genuine Issue To Be Tried) ("Statement of Material Facts in Dispute") [CR 241 - CR.243].

On January 25, 2005, the Individual Respondents filed a Motion to Strike [CR 246] ALL 21 of the Depositions taken by Ms. Hendrix, Ms. Hendrix's Affidavit, and Ms. Hendrix's

Statement of Material Facts in Dispute. Keaton, Ms. Hendrix's counsel, REFUSED to respond to the Respondents Motion to Strike.

From September 2004 through the February 22, 2005 Order, Ms. Hendrix was effectively proceeding as a *pro se* plaintiff. Once Keaton began receiving IRS notices about his personal tax situation in September 2004, his *only* participation is the case was to sign what Ms. Hendrix prepared. Ms. Hendrix was forced to file a response herself or face having those records thrown out by the court [Response to Motion to Strike, CR 248].

On February 8, 2005, a hearing was held in front of Judge Richard W. Story regarding the 'scope of employment' issue [CR.247]. Before the hearing, Keaton, US Attorney Powell and Judge Story met for fifteen (15) minutes behind closed doors without Ms. Hendrix present. During the hearing **Judge Story restricted Ms. Hendrix's and Keaton's testimony to a time period AFTER the Respondents committed their illegal acts.** At the end of the hearing, Judge Story allowed all parties five (5) days to file additional information regarding the "scope of employment" issue to be considered by the Court.

Ms. Hendrix has not spoken to Keaton since that hearing. When Keaton refused to answer her phone calls or respond to her e-mails, Ms. Hendrix filed the information requested by Judge Story as an Affidavit Supplying Additional Information in Response to February 8, 2005 Hearing [CR 250] on February 14, 2005. Ms. Hendrix attempted to inform the District Court of the actual events surrounding her filing of the Response to Defendants' Motion to Strike by filing an Affidavit with the court [CR 253, Attached as Appendix H]. ***At this point, the Court was obviously aware that the Appellant was operating on her own.***

2. District Court Dismissal. On February 23, 2005, *a mere eight (8) days after the last filing*, the District Court issued a 41-page Order dismissing all five (5) claims of Ms. Hendrix's case [Appendix ("App.") B]. Many of the arguments used were the exact arguments ***previously presented*** by US Attorney Powell and ***previously dismissed*** by the Court. The District Court's response to Keaton's total lack of fiduciary responsibility was to chastise Ms. Hendrix

> ..., it has come to the Court's attention, that on February 9, 2005 Plaintiff filed a response to Defendants' Motion to Strike at docket number [CR 248] where she signed the name of counsel without her attorney's express permission to do so. This kind of behavior is totally unacceptable behavior before the Court, ..., Since this case is due to be closed, the Court declines to sanction Plaintiff at this time" [February 22, 2005 Order, CR.251.Page B-31, Note 22]

Keaton informed Ms. Hendrix of the Court's February 22, 2005 decision by e-mail *eighteen (18) days after he was notified of it*. Therefore, Ms. Hendrix did not have time to file a Motion for Reconsideration of the decision. Ms. Hendrix timely filed an Appeal with the 11th Circuit Court of Appeal on March 31, 2005.

3. 11th Circuit Court of Appeals Dismissal Ms. Hendrix timely filed the Appeal with the 11th Circuit on March 31, 2005. Ms. Hendrix's Appellant's Brief was filed on September 9, 2005 and her Reply Brief was filed on November 1, 2005. In both Briefs Ms. Hendrix requested an Oral Hearing but without any explanation she was not allowed that opportunity.

The unpublished PER CURIAM Opinion of the Court was issued on February 8, 2006 [App. A]. On March 27, 2006, Ms. Hendrix filed a Petition for Rehearing based on the MANY disputed, overlooked and misapprehended issues in the February 8, 2006 Order. For instance, the Court agreed

with and made decisions based on the District Court Order's false statement that Ms. Hendrix had only filed three (3) EEO complaints when in fact she had filed four (4) complaints [# 96-2290, # 97-1320, # 97-1372 and # 98-1171].

The EEO Complaint that was 'overlooked' contained the very information that the District Court stated in their Order was necessary to uphold Ms. Hendrix's Whistleblower and Retaliation claims. Also, Ms. Hendrix's Wrongful Termination claim was incorrectly thrown out because the Court stated that there were only 113 days, not the required 120 days between the filing of EEO Complaint # 98-1171. The EEO #4 complaint was signed February 23, 1998, and formally filed March 4, 1998. The First Amendment was filed per Court Order July 17, 1998 [CR 11]. Thus, more than 120 days had passed between the two (2) filings. Even if both Courts could not count, they should have noticed the statement in the First Amendment, Paragraph #X "EEO Specialist Mary Peace has contacted Plaintiff's attorney and indicated *that she may proceed to litigate the termination as part of her ongoing lawsuit*" [CR 12].

Despite these, and many other, disputed, overlooked and misapprehended issues, the 11th Circuit responded to Ms. Hendrix's Rehearing request with a PER CURIAM statement "The petition for rehearing filed by the Appellant, Sarah Hendrix is DENIED." Sixteen (16) days later on a holiday – Good Friday [App. C]. The denial was signed by Justice Fay who is a "senior member" not a regular panel member of the 11th Circuit Court.

On May 31, 2006, Ms. Hendrix filed a Petition for Rehearing En Banc. ("Petition En Banc") [App. D]. On June 1, 2006, the 11th Circuit Court notified Ms. Hendrix that she needed to file a Motion for Leave to File for Rehearing

En Banc Out of Time ("Motion for Leave") [App. E]. Ms. Hendrix filed the Motion for Leave on June 12, 2006 [App E]. On June 15, 2006, Ms. Hendrix received a letter stating "Please disregard letter dated 6/01/06. Your petition for rehearing was denied on 4/14/06. You may petition for certiorari to the United States Supreme Court." [App F].

In a June 17, 2006 conversation the 11th Circuit Court Clerk informed Ms. Hendrix that the ninety-day (90) grace period that Ms. Hendrix had to file a Writ of Certiorari in the Supreme Court started retroactively beginning April 14, 2006. Thus Ms. Hendrix had 30 days to prepare this Writ.

Ms. Hendrix is now appealing to the Supreme Court with the rapidly diminishing hope that she can still receive justice in the United States court system and finally get her day in court per the Seventh Amendment.

REASONS FOR GRANTING THE WRIT

C. Argument and Law.

From the time of the founding of the United States, the jury trial was recognized as an important part of the governmental structure. The Seventh Amendment, adopted in 1791, established the right to a jury trial in civil cases in federal court.[1]

Recently, the courts have used summary judgment to reject claims in discrimination cases on a variety of bases many times pushing the envelope beyond the scope of factual situations deserving summary judgment. The manner in which procedural tools are applied to discrimination cases is often "outcome-determinative." The end result is that

1 U.S. Constitution Amend. VII.

plaintiffs are losing their opportunity to test their facts before a jury and are instead bound by the decision of a single judge on less than a full record.

1. Ms. Hendrix was denied her Seventh Amendment right to a jury trial because of procedural manipulations that have nothing to do with the merits of her claims.

"The right of trial by jury, ..., is perpetually spoken as the palladium of our public rights and liberties; and in all the various fluctuations of public opinion, it has remained untouched and unsuspected."[2]

Judges have increasingly used summary judgment to dismiss employment discrimination cases. For instance, in the Northern District of Georgia, of 76 discrimination cases recently filed against the IRS all but one were dismissed at summary judgement. The only plaintiff who did prevail past summary judgement was a law clerk for a Magistrate Judge in the same court where he filed his case before he was employed by the IRS and before he sued the IRS for discrimination. Coincidence?

Ms. Hendrix is appealing to the Court requesting that judges be required to apply the standards of Rule 12(b), Rule 56(c) and developed case law *uniformly* so as to not compromise the litigants' constitutional rights to a day in court as was done in the instant case.

As historically applied by the courts the summary judgment standard is that no "reasonable jury" could find for the non-moving party under the facts of the case. Of the summary judgment *trilogy*, the District Court and the 11th Circuit cited Celotex[3] when granting summary judgment

2 John C. Hogan, Joseph Story on Juries, 37 Or. L. Rev 234 (1958) (quoting Justice Story's article "Jury" published in 1831).

3 Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

in Ms. Hendrix' case. Celotex recognized that a defendant could obtain summary judgment not only by putting forth affirmative evidence that the plaintiff's case was meritless, but also by showing that the plaintiff would lack evidence to prove some essential element of her claim.

Nowhere does it state that the Courts could or should ignore legitimate evidence that is presented as was done in Ms. Hendrix's case.

Rule 56(c) required the moving party to show initially the absence of a genuine issue concerning any material fact. "Rule 56 must be construed with regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried by a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis."[4]

The Respondents did NOT meet their burden in this case. They have NOT shown that Ms. Hendrix's claims have no factual base. None of the Individual Respondents filed affidavits. In fact the Respondents filed a Motion to Strike 21 depositions, Ms. Hendrix's Affidavit with the attached 133 Exhibits, three (3) filings by Ms. Hendrix's [Material Facts In Dispute, CR 241, CR 242, CR 243] so that there would be NO information in front of the court to make the determination [CR 246].

The Motion to Strike effort was just another example of the procedural manipulation of this case that Ms. Hendrix has had to work around in the last eight (8) years in order to keep

4 Celotex Corp. v. Catrett, 477 U.S. at 327 (1986).

her case moving forward. Ms. Hendrix, on the other hand, has filed multitudes of evidence including over 133 Exhibits (produced by Respondents during discovery) that proved her claims. Also, on May 4, 2001, she attached over 175 pages of her own Exhibits to her Motion for Reconsideration that also proved her claims [CR 56].

Further, Ms. Hendrix provided the District Court proof on paper with her Exhibits that:

1) Respondent Zachery (Black male) signed the IRS Form # 51 that placed an unqualified black candidate in the International Examiner ("IE") position one month BEFORE the position was announced for competition by other IRS employees.

Respondent McBride (Black male) told Ms. Hendrix that "she was not going to get ahead in line of 'his people' for the IE position." The remark was overheard by an independent third party. "All that should be required to establish a prima facie case in the context of 'reverse discrimination' if for the plaintiff to present sufficient evidence to allow a fact finder to conclude that the employer is treating some people less favorably than others based on a trait that is protected under Title VII"[5]

2) Respondent Edmundson incorrectly and without notice lowered Ms. Hendrix's evaluation so that she could not compete for the IE position that she had previously successfully held in the Manhattan District of the IRS. Respondent Edmundson (Black female) told Ms. Hendrix that the IE position was a 'minority' position. That same day Ms. Hendrix memorialized this conversation with several individuals including IRS employees. "After a black female

5 Iadimarco v. Runyon, 190 F.3d 151.
6 McCormick v. District of Columbia, 554 F. Supp. 640.

was promoted to a position in which she served as the boss of the white plaintiff, she had the plaintiff's performance rating lowered. Noting that government personnel procedures were not followed, the court held that the alleged assertions that the plaintiff's writing skills were deficient were merely pretext,"[6] "Plaintiff told that the hires were 'minority hires.' Held that the plaintiff had presented sufficient evidence to support a claim of reverse discrimination and retaliation. Summary Judgment for the defendant was reversed."[7]

3) The Federal Labor Relations Authority determined that the IRS personnel department, under Respondent Zachery's control, incorrectly used an "Alternative Ranking System" in order to rank their unqualified black candidate, Mr. Word as the "best qualified" for the IE position. [Affidavit, Exh.# P 38, CR 238 - CR 240] "An inference of discriminatory purpose may be drawn from a supervisor's violation of regulations where such violation results in disadvantaging individuals on a racial basis."[8] Respondent McBride signed the Form # 51 removing the black candidate from the IE position after Ms. Hendrix filed her first EEO complaint citing reverse discrimination. [Affidavit. Exhibit P 30, CR 238 – CR 240]

4) Respondent Edmundson gave away over $250,000 of the American taxpayer's money in a *three week period* in exchange for negative letters written about Ms. Hendrix in order to tar her professional reputation after Ms. Hendrix complained of the Respondents' deliberate act of reverse discrimination. Ms. Hendrix can prove on paper that from 1994 through 1997 OVER $2,300,000 was traded in similar *quid pro quos*. [Affidavit. Exhibit P 32-P 36, CR 238 - CR 240]

---

7 McGarry v. Board of County Comm'rs 175 F.3d 1193 (10th Cir. 1999).
8 Sawyer v. Russo, 19 FEP 44 (D.D.C. 1979).

5) Respondents McBride, Ayres, Butkovich and Byrd intervened in the Congressionally ordered investigation of Respondent Edmundson, Respondent Zachery and Respondent McBride's illegal actions and made false statements and misrepresentations to Senator Coverdells' office because they knew that they were guilty of those actions. [Affidavit. Exhibit P 67, CR 238 – CR 240]

6) Respondent Zachery signed off on the 15-day suspension of Ms. Hendrix based on fabricated, false and **unsupported** charges that Ms. Hendrix had some how threatened Respondent Edmundson's life.

7) Respondent McBride issued the 60-day opportunity letter after Ms. Hendrix filed EEO complaint # 97-1372 that exposed his interference in the Congressionally ordered investigation of his, Respondent Edmundson's and Respondent Zachery's illegal actions.

8) Respondent McBride placed Ms. Hendrix on administrative leave after she publicly spoke at Newt Gingrich's town hall meeting about discrimination at the IRS. Ms. Hendrix's testimony appeared in an article in the Atlanta Journal & Constitution.

The Respondents, on the other hand, have provided NO evidence of any legitimate nondiscriminatory reasons for circumventing the Civil Service Rules in order to place their unqualified Black candidate in the IE position one (1) month BEFORE the position was announced for competition by other IRS employees.

The Respondents have provided NO evidence of a

legitimate nondiscriminatory reason for tarring the Ms. Hendrix's professional reputation by participating in several *quid pro quos* that resulted over $2,300,000 of the American taxpayers money being exchanged for negative letters and reports written about her.

The Respondents have provided NO evidence of a legitimate nondiscriminatory reason for retaliating against Ms. Hendrix by denying her Phase 3 On The Job Training ("OJT") when other Black IRS employees who had performed at the same or lower level were allowed the training.

Also, as the record reveals, Ms. Hendrix has *always* stated that she has been subjected to a continuing pattern of discriminatory, harassing and retaliatory actions by the Respondents that started within the first month after she transferred into the Atlanta District of the IRS.

Ms. Hendrix has never raised "disparate treatment" as an explanation for the retaliatory 15-day unpaid suspension in June 1996. Fortunately for others, Ms. Hendrix knows of NO other person similarly situated who was subjected to the continual horrendous retaliatory actions of the Respondents from 1994 through 1997. US Attorney Powell raised the issue of disparate treatment as a smoke screen to deflect the Court's attention from the real issue – **powerful IRS employees using their position and the American taxpayers' money for their own personal agenda.**

Because there is no nondiscriminatory explanation for their actions, the Respondents and US Attorney Powell have resorted to eight (8) years of misrepresentations and procedural manipulation to keep Ms. Hendrix from getting her day in court.

2. The court should grant review to determine why the 11th Circuit has followed the 'bright-line' rule in all cases except the instant case. Federal Rules 12(b) and 12(c) provide that "before a motion to dismiss may be treated as one for summary judgment, all parties must be given 'reasonable opportunity' to present all pertinent material."[9] Rule 56(c) states that the "summary judgment motion should be served as least 10 days before the time fixed for a hearing."

In most Circuits, actual notice is required because Rule 12(b) explicitly links the conversion process to Rule 56, which requires an actual 10-day notice period. If a party is not afforded the opportunity to ask for an extension under Rule 56(f), then there is a risk of granting a premature summary judgment that "railroads" the non-moving party as was done in the instant case.

The 11th Circuit Court has consistently applied the 'bright-line' rule of a 10 day notice in other cases before their court but did not do so in this case. "This circuit has consistently enforced the strict notice requirements of Rules 12(b) and 56, creating a 'bright-line' rule:

If a district court fails to comply with the ten-day notice requirement, the case will be reversed and remanded so that the district court may provide the non-moving party with adequate notice,"[10] and "the court must give the parties ten days notice that it is converting

---

9 Plante v. Shivar, 540 F.2d 1233 (4th Cir. 1976), Adams v. Campbell County School District, 483 F.2d 1351 (10th Cir. 1973). Parks v. Marco-Dynamics, Inc. 121 Ariz. 517.

10 Jones v. Auto Ins. Co. of Hartford, Conn., 917 F.2d 1528 (11th Cir. 1990).

11 Id. at 1533.

the moving party's motion to dismiss into a motion for summary judgment." The court explained that the "strict notice requirements of Rules 12(b) and 56... creat[ed] a 'bright-line' rule [of actual notice],"[11] and reasoned that a "strict interpretation of those requirements is critical because a successful summary judgment results in a final adjudication of the merits of a case." Further, the 10-day notice requirement "serves as a valuable procedural safeguard" and "ensures that the parties have the opportunity to present to the court every available argument, legal and factual..."[12]

Also, "The cases from this [11th] circuit are clear that before a motion to dismiss may be converted to one for summary judgment *the court must first communicate its intention to the parties to so treat the motion* and then allow the parties ten days to submit any relevant evidence and argument in support or opposition to the merits."[13] "It is clearly the law in this circuit that whenever a district judge converts a 12(b) motion to dismiss into one for summary judgment by considering matters outside the pleadings the judge *must give* all parties ten day notice that he is converting the motion. **Failure to give such notice will result in reversal and remand.**"[14] "We have held repeatedly that this requirement of notice will be deemed *strictissimi juris* and applies to *all* parties litigant."[15] "[T]his court has established a 'bright-line' test requiring 10-day advance notice that the court will take a motion for summary judgment under advisement as of a certain date,"[16] "no conversion occurs

---

12 Jones, 917 F.2d at 1532 (citing Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

13 Marine Coatings, 792 F.2d at 1568.

14 Donaldson v. Clark, 819 F.2d 1551 (11th Cir. 1987) (en banc) quoting Property Management & Investments, Inc. 752 F.2d at 606.

15 Griffith v. Wainwright, 772 F.2d 822 (11th Cir. 1985).

16 Milburn v. United States, 734 F.2d 762 (11th Cir. 1984).

17 Wilson-Cook, 942 F.2d 247.

unless and until a court indicates that it considered all extraneous material."[17]

The District Court incorrectly converted Respondent's Motion to Dismiss into a Motion for Summary Judgment without giving the proper ten-day notice to Ms. Hendrix and without granting her a hearing thus ignoring the 11th Circuit's own 'bright-line' rule procedures. The 11th Circuit Court's February 8, 2006 Order noted the problem but in order the justify the District Court's actions, stated:

"Regardless, even if this notification was not sufficient to convert the pleading into a summary judgment motion, Hendrix has not contended, and the record does not reflect, that, following this notice, Hendrix was unaware of the court's intent and, otherwise, would have presented additional materials." [February 8, 2006 Order, Page 11, Para.1].

Ms. Hendrix disagrees with the Court's conclusion. At the time of the conversion, Ms. Hendrix was only *theoretically* represented by counsel. Once Keaton began receiving IRS notices about his personal tax situation in September 2004, his participation is the case consisted of signing what Ms. Hendrix produced if she was able to track him down. From September 2004 through the February 22, 2005 Order, she was effectively proceeding as a pro se plaintiff.

Keaton has not spoken to the Appellant since the February 8, 2005 hearing to this very day. Neither the Court nor Keaton informed Ms. Hendrix there was going to be a conversion and that she could have ten days to provide additional information in order to avoid summary judgment. The Appellant is not a lawyer. How could she be aware of a notification requirement? "We consistently have required that district courts "be particularly careful to ensure proper notice

18 Herron v. Beck, 693 F.2d 125.

to a *pro se* litigant."[18]

It also should be clear to this Court upon reviewing the docket of the case [App. J] that the Appellant would NEVER NOT file additional information in order to avoid summary judgment if she was aware that that was an option. She has repeatedly corrected the misrepresentations made to the District Court by the US Attorney. The Appellant would certainly have connected the dots better for the Court if she had been given the ten-day notice required at the time of the conversion.

This lack of notification can hardly be deemed "harmless error" since Ms. Hendrix's case has been dismissed based on incorrect information provided by the US Attorney and she was not notified of the District Court's decision by Keaton until it was too late to file A Motion for Reconsideration. Ms. Hendrix respectfully requests the Court to enforce the 11th Circuit's own 'bright-line" rule, reverse the District Court Order and remand the case for trial.

3. The court should grant review to clarify differences between circuits who enforce a 'bright-line' rule and those who do not. Rule 12(b) states that "[i]f, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, ..., This process is known as "conversion."[19]

A) When converting a motion to dismiss into a motion for summary judgment, Rule 12(b) requires the judge

19 Rockefeller Ctr. Props., 184 F.3d 280, 287 (3d. Cir. 1999).

to comply with the strict requirements of Rule 56, which contains an explicit 10-day notice requirement. Courts favoring actual notice have correctly interpreted Rule 12(b)'s explicit reference to Rule 56 ("treated ...and disposed of as provided in Rule 56") as requiring an actual notice period. In Jones, after the defendant attached an affidavit to its motion to dismiss, the circuit court converted it into one for summary judgment without giving actual notice of conversion. The appellate court reversed, holding that the court must give the parties ten (10) day notice."[20]

B) Actual notice is required because Rule 12(b) explicitly links the conversion process to Rule 56, which requires an actual 10-day notice period; the advantages of an easy-to implement unambiguous 'bright-line' rule are superior to a highly subjective constructive notice rule; and actual notice is more consistent with the burdens and purposes of summary judgment. The Advisory Committee Notes to Rule 12(b) affirm this interpretation. This desire for clarity is consistent with an important goal of procedural law, which is to "articulate clear, workable rules that are capable of easy interpretation by future litigants."

C) An easy-to-implement and unambiguous 'bright-line' rule requiring actual notice is vastly superior to a highly subjective rule allowing constructive notice. Actual notice creates a 'bright-line' rule that clearly communicates the court's intention to convert a motion to dismiss into one for summary judgment. It is both "easy to give and removes ambiguities."[21] Conversely, "courts that allow constructive notice rely on a highly subjective approach that relies on the

---

20 Jones v. Auto Ins. Co. of Hartford Conn., 917 F.2d 1528, 1532 (11th Cir. 1990).
21 Rockefeller, 184 F.3d at 288.
22 Dayco, 523 F.2d. at 393.

specific facts and circumstances of each case."[22]

D) Courts using constructive notice have created a hodgepodge of vague and unworkable standards. The various tests used by courts permitting constructive notice include whether the "facts and circumstances of each case" resulted in "unfair surprise,"[23] whether the parties were provided "notice" and "opportunity" to respond,"[24] and "whether the parties were "fairly apprised" of conversion,"[25] These tests in turn depend on a many other factors, including "whether the party or parties were able to conduct enough discovery prior to conversion,"[26] "the amount of time between the filing of supporting materials and the granting of the motion for summary judgment,"[27] and "whether the affected party was represented by counsel."[28]

Litigants in any given district are, therefore, forced to second-guess whether a motion to dismiss has or will be converted based on a set of poorly defined criteria. As a result, these ambiguous standards are at odds with judicial efficiency and fairness when such an unambiguous and easy-to-implement bright-line alternative exists.

E) Actual notice provides the nonmoving party with sufficient notice and, therefore, the opportunity to rebut a summary judgment motion. One of the vices of unexpected conversion "is that it denies the surprised party sufficient opportunity to bring forward factual matters which

23 Id. at 393.

24 Alioto v. Marshall Field's & Co., 77 F.3d at 936.

25 Portland Retail Druggists Ass'n v. Kaiser Found. Health Plan, 662 F.2d 641, 645 (9th Cir. 1981).

26 Id. at 646.

27 C.B. Trucking, Inc. v. Waste Mgmt., Inc., 137 F.3d 41, 44 (1st Cir. 1998).

28 San Pedro Hotel Co. v. City of Los Angeles, 159 F.3d 470, 477 (9th Cir. 1998).

29 Portland Retail Druggists, 662 F.2d at 645.

30 Jones, 917 F.2d at 1533.

may become relevant only in the summary judgment, and not the dismissal, context."[29] Therefore, it is of the "utmost importance that parties are aware of the transformation of the motion to dismiss into a motion for summary judgment, and are able to present to the court materials in support of or in opposition to the motion."[30]

Lack of actual notice prevents the nonmoving party from effectively rebutting a summary judgment motion. Also, because the nonmoving party is not adequately apprised of conversion with constructive notice, they are not able to ask the court for an extension *as happened in Ms. Hendrix's case*.

REVIEW IS WARRANTED BY THE IMPORTANT ISSUES AT STAKE

The Individual Respondents committed ILLEGAL acts in addition to their discriminating conduct that Ms. Hendrix can substantiate on paper to a jury. Respondent Zachery was recently forced to retire because he was caught again committing the same ILLEGAL acts.

Ms. Hendrix has spent over eight (8) years of her life bringing this information to the attention of Congress, the news media and the Courts. She has pursued ever avenue open to her to in order to inform government officials and the American public of the Respondents illegal acts. The only request that Ms. Hendrix has made is that the *trier of fact*, a jury, be allowed to determine the merits of her claims.

It is unbelievable that the Courts are more concerned with denying Ms. Hendrix a jury trial based on misrepresentations made **time and again** by a US Attorney rather than seeing that justice is done in this case. The 11th Circuit has consistently applied the 'bright-line' rule to other cases in its jurisdiction. Ms. Hendrix is respectfully requesting that the

same 'bright-line' standard be applied in this case and that it be remanded for trial.

It would be a manifest injustice to the American public as well as to Ms. Hendrix to allow the Individual Respondents, who still hold powerful positions at the IRS, to conclude they are truly above the law because they have learned they can procedurally manipulate the system. As Ms. Hendrix has stated repeatedly – **"If they [Individual Respondents] are willing to give away over $2,300,000 of the American taxpayer's money to get me fired then, what in the world are they doing for themselves?"**

CONCLUSION

For the foregoing reasons, Ms. Hendrix respectfully requests that the Court grant the Petition for Writ of Certiorari.

Respectfully submitted this 22 day of November, 2006.

Sarah Hendrix
134 Summerset Lane
Atlanta, GA 30328
(770) 396-0716 (phone/fax)

NOTARY

CERTIFICATION OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(b). This petition contains twenty eight (28) pages.

This 22 day of November, 2006.

Sarah Hendrix
Pro Se Petitioner
134 Summerset Lane
Atlanta, GA 30328

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing document upon counsel of record and others as shown by depositing a true copy of the same in the US mail, proper postage prepaid, addressed as follows:

R. David Powell
Assistant US Attorney
600 US Courthouse
75 Spring Street SW
Atlanta, GA 30303

Solicitor of the United States
Room # 5614
Department of Justice
95 Pennsylvania Avenue
Washington, DC 20530-0001

This 22 day of November, 2006.

Sarah Hendrix
Pro Se Petitioner
134 Summerset Lane
Atlanta, GA 30328

Supreme Court, U.S.
FILED
JUL 13 2006
OFFICE OF THE CLERK

2

No. 06-781

IN THE

United States Supreme Court

SARAH HENDRIX,

Petitioner.

v.

HENRY PAULSON, SECRETARY OF THE DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, RICHARD BYRD, MICHAEL MCBRIDE, JOHN BUTKOVICH, WANDA EDMONDSON, TY AYRES and WILLIAM ZACHERY,

Respondents.

Appendix
Volume 1 of 2

On Petition for a Writ of Certiorari to the United States Court of Appeals for the 11th Circuit

PETITION FOR WRIT OF CERTIORARI

Sarah Hendrix
Pro Se
134 Summerset Lane
Atlanta, GA 30328
(770) 396-0716 (phone/fax)

July 12, 2006
Revised September 17, 2006
Revised November 22, 2006

Robert David Powell
Lori M. Bernek
US Attorney
Northern District GA
75 Spring Street, S.W.
600 U.S. Courthouse
Atlanta, GA 30303
(404) 581-6004
(404) 581-6350

APPENDIX A – F

A

A-1 [DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
February 8, 2006
THOMAS K. KAHN
CLERK

No. 05-11583
Non-Argument Calendar

D. C. Docket No. 97-03579-CV-RWS-1

SARAH E. HENDRIX,

Plaintiff-Appellant,

versus

JOHN SNOW, Secretary of the
Department of the Treasury of
the United States of America,
UNITED STATES OF AMERICA,
WANDA EDMUNDSON,
MICHAEL MCBRIDE,
JOHN BUTKOVICH, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(February 8, 2006)

Before TJOFLAT, WILSON and FAY, Circuit Judges.

PER CURIAM:

Sarah E. Hendrix appeals pro se[1] the district court's order granting summary judgment to her former employer, John W. Snow, the Secretary of the Department of the Treasury ("Secretary"), and six current or former employees of the Department of the Treasury, including Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres, and Richard Byrd ("individual defendants"), on her claims of employment discrimination based on race and sex, under 42 U.S.C. § 2000e-2(a) ("Title VII"); and retaliation, under 42 U.S.C. § 2000e-3; violations of the Whistleblower Protection Act ("WPA"), under 5 U.S.C. § 1221; conspiracy to interfere with official duties, under 42 U.S.C. § 1985(1);[2] and state-law claims of intentional infliction of emotional distress. For the reasons set forth more fully below, we affirm.

In November 1997, Hendrix, a white female who was employed by the Internal Revenue Service ("IRS") as a Revenue Officer, filed a counseled civil complaint, naming the Secretary as the sole defendant. Hendrix alleged in her complaint that, soon after she was transferred from the Manhattan District to the Georgia District in 1994, and continuing until her termination from this employment in January 1998, her employer harassed and discriminated against her because of her race and sex. Hendrix also contended that she was retaliated against for making complaints and was wrongfully suspended in July 1996.

In June and July 1998, Hendrix filed (1) an unopposed motion to amend her complaint, and (2) her First Amended

---

1 Although Hendrix proceeded with various counsel in the district court, she terminated her last counsel's services prior to filing this appeal.

2 Section 1985(1) specifically proscribes conspiracies that interfere with the performance of official duties by federal officers. See Kush v. Rutledge, 460 U.S. 719, 724, 103 S.Ct. 1483, 1486-87, 75 L.Ed.2d 413 (1983).

Complaint. Her First Amended Complaint included two additional Title VII claims, alleging that the Secretary (1) subjected her to employment discrimination on the basis of race and sex, and (2) terminated her employment in December 1997, in retaliation against her complaining about her employer's discriminatory acts, filing administrative complaints, and contacting members of Congress and the media ("Counts One and Two"). In August 2001, after receiving leave to file another amended complaint, Hendrix filed her Second Amended Complaint, adding as defendants in their individual capacities six employees of the Treasury Department, and adding a claim for violations of the WPA, because the defendants took "personnel actions" and terminated her employment because of protected disclosures that she had made ("Count Three"); a claim of conspiracy under § 1985(1) ("Count Four"); and claims of intentional infliction of emotional distress ("Count Five"). Finally, in August 2004, the court granted Hendrix leave to file a "Third Amendment to Complaint," whereby she amended Count Five to allege as follows:

> Plaintiff has complied with the Federal Tort Claims Act, 28 U.S.C. § 2675(a), by filing all appropriate administrative claims regarding the offending activities of the Defendants. Plaintiff has exhausted those administrative remedies available to her.

The United States Attorney for the Northern District of Georgia ("U.S. Attorney") subsequently issued a certification that each of the defendants sued in their individual capacities was acting within the scope of his or her employment with the Department of the Treasury, the Treasury Inspector General for Tax Administration ("TIGTA"), or the IRS, at the time he or she allegedly committed the acts or omissions alleged in Hendrix's Third Amended Complaint. The U.S. Attorney also filed with this certification notice of the

substitution of the government for the individual defendants as to all tort claims, pursuant to 28 U.S.C. § 2679.

All of the defendants then moved for either dismissal or summary judgment. The government first argued that Hendrix's tort claims should be dismissed because, after the substitution of the government for the individual defendants, the Federal Tort Claim Act ("FTCA"), 18 U.S.C. § 2671, et seq., expressly barred tort claims against the Secretary in his official capacity. The government also contended that, although the FTCA provides for a limited waiver of sovereign immunity against the government, this waiver was not applicable because Hendrix had failed to exhaust her administrative remedies under 28 U.S.C. § 2675, by not filing an administrative FTCA claim relating to acts or omissions attributable to TIGTA or IRS employees.

The Secretary similarly argued that he was due summary judgment on Hendrix's tort claims because the FTCA expressly bars tort claims against him in his official capacity. The Secretary contended that summary judgment was warranted on Hendrix's § 1985(1) claims because Hendrix could not show that the government had waived its sovereign immunity. The Secretary argued that Hendrix had failed to exhaust her administrative remedies for her WPA claims, as contained in the CSRA, because, once she elected to pursue her WPA claims before the Office of Special Counsel ("OSC"), and the OSC denied her claims, she was required to, but did not, seek review of this denial by the Merit System Protection Board ("MSPB"). The Secretary further contended that Hendrix's Title VII claims, other than her claims relating to her suspension, were barred by her failure to timely exhaust her administrative remedies. Additionally, the Secretary asserted that summary judgment was warranted as to Hendrix's Title VII claims relating to her suspension because (1) Hendrix had failed to identify another employee

outside of her protected class who had been disciplined differently for engaging in the same conduct;[3] and (2) her suspension was proposed before she engaged in any protected activities.

Similarly, the individual defendants moved for summary judgment, arguing that Hendrix's WPA claims were due to be dismissed because, among other things, Hendrix had failed to exhaust her administrative remedies by appealing her claims to the MSPB.[4] The individual defendants contended that summary judgment was warranted on Hendrix's § 1985(1) claims because, as statutory claims against federal employees that arose out of Hendrix's federal employment, they were preempted by the CSRA. Alternatively, the individual defendants argued that the § 1985(1) claims were time barred because Hendrix did not seek to add them until January 2001, more than two years after her termination in January 1998—the most recent act Hendrix attributed to the defendants.

In support of the defendants' arguments that Hendrix failed to exhaust her administrative remedies relating to her claims under Title VII and the WPA, they submitted the following evidence. In a formal complaint, which Hendrix filed with the IRS's Equal Employment Office ("EEO") on August 5, 1996, she identified 18 issues, which the

---

3 This conduct included Hendrix's (1) twice taking home case files home in violation of a directive to keep them in the office; (2) refusing to turn over her case files after management went to her residence to retrieve them; and (3) stating in front of a co-worker that "either I'm going to kill her or she's going to kill me."

4 Congress created the MSPB in 1978 as part of the Civil Service Reform Act ("CSRA"). See 5 U.S.C. § 1201 et seq.. The CSRA provides for review of most personnel actions taken by a federal agency against an "employee," see 5 U.S.C. § 7551 (defining employee), and affords employees aggrieved by an adverse employment action a right to seek judicial review of decisions of the MSPB, see 5 U.S.C. § 7703(a)(1). "MSPB review of adverse employment actions was designed to protect federal employees from widespread politically motivated terminations whenever the party in power changed hands." See Chappell v. Chao, 388 F.3d 1373, 1375 n.1 (11th Cir. 2004).

EEO grouped into 6 claims: (1) in January 1994, when she transferred to the Georgia District, she did not receive a promised position as an International Examiner ("IE"); (2) in April 1994, she was not advised that she could have been subject to criminal prosecution for providing false information regarding financial obligations; (3) in April 1995, she was denied selection for an IE position; (4) from September 1995 until April 1996, she was subject to various instances of harassment; (5) on January 30, 1996, she was given a poor annual evaluation; and (6) in July 1996, she was wrongfully suspended ("EEO-1").

On January 15, 1997, the EEO issued a final agency decision, notifying Hendrix that it was dismissing her first five claims as untimely because she had failed to seek counseling within 45 days of the alleged acts. As part of this notice, the EEO also informed Hendrix that (1) the decision constituted the final decision by the Department of the Treasury on the dismissed portions of the complaint, (2) Hendrix either could file a civil action in the district court within 30 days or file an appeal with the MSPB, and (3) Hendrix could not appeal to the Equal Employment Opportunity Commission ("EEOC"). Nevertheless, Hendrix filed an appeal of this final agency decision with the EEOC, which the EEOC dismissed on October 30, 1997, for improper venue.

On August 14, 1997, while Hendrix's appeal from EEO-1 was pending, she filed a complaint with the Office of the Special Counsel ("OSC"), alleging that the defendants had violated the WPA by issuing her a 60-day opportunity letter—informing her that she had to improve her performance within 60 days to avoid the termination of her employment—in retaliation against disclosures she had made in a letter to "Mr. Cowan" on May 6, 1997. Hendrix also subsequently alleged that the defendants violated the WPA by placing her on paid leave, effective October 9,

1997, during the time period she had for responding to a notice of her proposed termination. On November 17, 1997, the OSC issued a decision, whereby it (1) declined review of Hendrix's Title VII claims because Hendrix already had filed an EEO complaint, and (2) determined that Hendrix had failed to state a WPA violation.

On July 24, 1997, Hendrix filed a second EEO complaint ("EEO-2"), which the EEO dismissed on August 27, 1997, based on its determination that the claims she was attempting to raise already had been raised in another proceeding. Furthermore, on March 4, 1998, Hendrix filed a third EEO complaint ("EEO-3") with the IRS Office, alleging that the termination of her employment in January 1998, was wrongful. As discussed above, Hendrix filed an amended civil complaint in the district court, adding this wrongful discharge claim, on June 25, 1998, less than 120 days after filing her EEO-3 complaint.

The Clerk of the Court then issued notices to Hendrix, advising her to respond to these summary judgment motions. Hendrix opposed these motions, arguing that summary judgment should not be granted for her claims against the government because (1) the government should not be substituted for the individual defendants, who remained liable in their individual capacities under the FTCA; and (2) she had exhausted her administrative remedies by filing three EEO complaints. Hendrix also contended that summary judgment was not warranted for her claims against the Secretary and the individual defendants because (1) the government should not be substituted for the Secretary and the individual defendants; (2) she had a remedy against the Secretary and the individual defendants in their individual capacities under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct.

1999, 29 L.Ed.2d 619 (1971);[5] (3) she had a private right of action, created by a 1998 amendment to 26 U.S.C. § 7804, through which she could raise a § 1985(1) claim; (4) she exhausted her administrative remedies for her WPA claims by submitting "mixed case" EEO complaints; and (5) unidentified disputed issues of fact existed as to her Title VII claims against the Secretary.

After Hendrix also filed separate objections to the U.S. Attorney's scope-of employment certifications, the district court conducted an evidentiary hearing. The court subsequently granted the defendants' motions for dismissal and/or summary judgment as to all of Hendrix's claims. The court first determined that, because Hendrix had satisfied the exhaustion requirements for her Title VII claims relating only to her 15-day suspension, her remaining Title VII claims should be dismissed.[6] The court also determined that Hendrix's Title VII claims relating to her suspension should be dismissed based on her failure to establish a prima facie case because she (1) failed to identify a similarly situated employee outside of her protected class who engaged in similar misconduct, but who received more favorable treatment; (2) failed to cite to evidence showing that the suspension was discriminatory; and (3) conceded in her response to the defendants' statement of material facts that she "had not filed any EEO complaints at the time of the 15-day suspension."

---

5 In Bivens, the Supreme Court held that plaintiffs may bring a cause of action for money damages against federal officers in their individual capacities based on a violation of a constitutional right. See Bivens, 403 U.S. at 395-97, 91 S.Ct. at 2004-05.

6 In concluding that Hendrix had failed to exhaust her administrative remedies as to the majority of her Title VII claims, the court explained that Hendrix (1) neither filed an action in the district court within 30 days, nor appealed to the MSPB, the EEO's decision that all of her claims in EEO-1, except those relating to her suspension, were untimely; and (2) filed her first amended complaint, adding her wrongful-termination claim, less than 120 days after raising this claim in EEO-3.

The court next granted the defendants summary judgment on Hendrix's WPA claims, concluding that Hendrix had failed to exhaust her administrative remedies for these claims because, although Hendrix's EEO complaints might be considered "mixed case[s,]" (1) Hendrix had failed to raise her WPA claims in any of her EEO complaints; (2) her claims in the instant case, nevertheless, would have been untimely; and (3) she failed to appeal to the MSPB the OSC's decision dismissing her WPA claims. The court also granted summary judgment on Hendrix's § 1985(1) conspiracy claim against the individual defendants, explaining that, because this claim arose out of the federal employment relationship, the CSRA was her exclusive remedy. Additionally, the court explained that, to the extent Hendrix was contending that she could maintain an action against the individual defendants, pursuant to Bivens, we had rejected this argument.

Finally, the court determined that summary judgment was warranted as to Hendrix's tort claims. The court explained that, because the individual defendants' alleged tortious acts involved acts and decisions they made relating to Hendrix's employment with the IRS, including employee discipline, participating in investigations of employee wrongdoing, and decision-making regarding training and promotions, Hendrix had failed to establish that these were committed outside the scope of the individual defendants' federal employment,

even if the acts were intentional or malicious.[7] The court, therefore, concluded that the U.S. Attorney's scope-of-employment certifications were proper, and it ordered the substitution of the government for the individual defendants as to Hendrix's tort claims. After the substitution of the government, the court also concluded these claims were preempted by the CSRA because they involved prohibited personnel actions as contemplated by 5 U.S.C. § 2302.

As a preliminary matter, because the defendants filed their motions as alternative motions to dismiss or for summary judgment, we must determine how to construe them. "Once the court considers matters outside the complaint, the Rule 12(b)(6) motion to dismiss converts into a motion for summary judgment." Garcia v. Copenhaver, Bell & Associates, M.D.'s, P.A., 104 F.3d 1256, 1266 n.11 (11th Cir. 1997). A district court, however, in converting a motion to dismiss into a motion for summary judgment, generally "must notify the parties and allow the parties ten days to submit relevant evidence and arguments in support or opposition to the merits." Id.

Here, before granting the defendants' motions for summary judgment, the clerk of the court issued three orders, notifying Hendrix that, after the 20-day period she had to respond had elapsed, the court intended to take the

---

7 Clarifying that it was not discussing each of the alleged tortious acts that Hendrix had identified, the court explained that it had reviewed each of the acts individually and determined that Hendrix both had failed to identify a tortious act committed by each individual defendant and not shown that any of the individual defendants were acting outside the scope of their employment. The court also specifically explained that: (1) to the extent Hendrix was arguing that the acts involved conduct that could subject the defendants to discipline or termination by the IRS, she was merely disagreeing with decisions made; (2) Hendrix had failed to name as a defendant the person responsible for selecting the employee to file the IE position; and (3) even if her immediate supervisor's frequent reviews of her work and orders for her to leave files in the office were intended to induce Hendrix to quit her job, these were all job-related decisions.

defendants' motions for summary judgment under advisement and that Hendrix's response had to show a triable issue through affidavits or other materials. Regardless, even if this notification was not sufficient to convert the pleading into a summary judgment motion, Hendrix has not contended, and the record does not reflect, that, following this notice, Hendrix was unaware of the court's intent and, otherwise, would have presented additional materials. See Trustmark Ins. Co. v. ESLU, Inc., 299 F.3d 1265, 1268-69 (11th Cir. 2002) (concluding that plaintiff's response to the court's notice, as well as the plaintiff's attachments to its response to the dispositive motion and its failure to show that it otherwise would have proffered additional evidence, rendered the case sufficiently "unique," such that it constituted an exception to the Rule 56(c) notice requirement). Because the court in this case cited to the parties' pleadings, evidentiary submissions, and legal arguments, and because the record reflects that Hendrix had notice of the court's intent and her burden of response, the defendants' dispositive motions will be reviewed as motions for summary judgment.

A court's order granting summary judgment is reviewed de novo, "view[ing] all evidence and all factual inferences therefrom in the light most favorable to the non-moving party." Miller v. King, 384 F.3d 1248, 1258-59 (11th Cir. 2004). "Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Id. at 1259 (quotation omitted).

Issue 1: Title VII claims

Hendrix generally argues that the district court erroneously granted the defendants summary judgment on the merits of her Title VII claims when disputed issues of fact existed. Without directly challenging the district court's conclusions concerning her failure to timely exhaust her administrative remedies, Hendrix also argues for the first time on appeal that, pursuant to the Supreme Court's decision in National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 122 S.Ct. 2061, 153 L.Ed.2d 106 (2002), the court should have construed her claims as stating a claim of continuing hostile work environment, such that, if her claim relating to her temporary suspension was timely, all of her claims were timely. Additionally, Hendrix asserts that the court erred in dismissing her Title VII claims based on her suspension because she "was suspended for 15 days on a trumped up charge that she somehow threatened Appellee Edmundson's life."

To the extent the district court dismissed the majority of Hendrix's Title VII claims based on her failure to exhaust her administrative remedies, "[a] federal employee must pursue and exhaust her administrative remedies as a jurisdictional prerequisite to filing a Title VII action." See Crawford v. Babbitt, 186 F.3d 1322, 1326 (11th Cir. 1999) (citing Brown v. General Servs. Admin., 425 U.S. 820, 832- 33, 96 S.Ct. 1961, 1967-68, 48 L.Ed.2d 402 (1976)). A federal employee who alleges both discrimination in violation of Title VII and "adverse employment actions" affecting federal civil servants, that is, a "mixed case," may choose between filing a "mixed case complaint" with her agency's EEO office, or filing a "mixed case appeal" directly with the MSPB. 29 C.F.R. § 1614.302(b). She may not file under both, however. Id. The relevant agency EEO office and the MSPB can and must address both the discrimination claims and the appealable personnel actions. Id.

A federal employee who chooses to assert her "mixed case complaint" against the government through her agency's EEO office, as Hendrix did, must undergo a two-step process to exhaust her administrative remedies: (1) informal counseling with an EEO counselor within 45 days of the challenged employment act, and (2) the filing of a formal complaint with the agency or department within 15 days after the EEO counselor has issued a notice of final interview. 29 C.F.R. §§ 1614.105 and 1614.106. Moreover, in a "mixed case complaint," a federal employee may not file a civil suit in the district court until 120 days after she filed her formal complaint with the employing agency. 5 U.S.C. § 7702(e)(1)(A).

In the instant case, Hendrix initially contacted an EEO counselor on June 6, 1996, and she filed her first formal "mixed case" EEO complaint, that is, EEO-1, on August 5, 1996, raising 18 issues, which the IRS's EEO office grouped into six discrete claims. On January 15, 1997, the EEO properly issued a decision, notifying Hendrix that it was dismissing all of Hendrix's claims, other than her claims relating to her suspension on July 1996, because they occurred more than 45 days before she initiated her complaint and, thus, were untimely. Moreover, the EEO advised Hendrix that she either could file a civil action in the district court within 30 days or appeal the decision to the MSPB. Because Hendrix failed to take either of these measures and, instead, appealed to the EEOC, the district court did not err in concluding that she failed to exhaust her administrative remedies as to these claims. See 29 C.F.R. § 1614.302(b).

As discussed above, Hendrix also contacted an EEO counselor concerning her discharge on January 11, 1998, and filed a third formal EEO complaint, that is, EEO-3, on March 4, 1998. Because Hendrix's discharge occurred in January 1998, her filing of EEO-3 was timely. See 29 C.F.R.

§§ 1614.105 and 1614.106. However, by adding this claim in her amended complaint on June 25, 1998, less than 120 days after she filed EEO-3, she failed to first exhaust her administrative remedies. See 5 U.S.C. § 7702(e)(1)(A). Thus, the district court also did not err in concluding that summary judgment was warranted as to Hendrix's discharge claim.

Indeed, Hendrix is not challenging directly the district court's findings applying these rules of exhaustion. Instead, Hendrix is arguing for the first time on appeal that the court should have construed her claims as a claim of hostile work environment, such that all of her claims were timely. We, however, normally will not consider a legal issue or theory raised for the first time on appeal. See Four Seasons Hotels and Resorts, B.V. v. Consorcio Barr S.A., 377 F.3d 1164, 1168-69 (11th Cir. 2004). Moreover, although this general rule is not jurisdictional, and we may choose to hear newly-raised arguments under "special circumstances," Hendrix has not alleged that any of these circumstances are applicable to her case. See Access Now, Inc. v. Southwest Airlines Co., 385 F.3d 1324, 1332 (11th Cir. 2004) (listing the following five "special circumstances": (1) the issue involves a pure question of law, where the court's refusal to consider it would result in a miscarriage of justice; (2) the appellant had no opportunity to raise an objection in the district court; (3) interests of substantial justice are at stake; (4) the proper resolution of the issue is beyond any doubt; or (5) the issue presents significant questions of general impact or of great public concern). Hendrix also has not provided any basis for her failure to raise this issue in the district court, where she was represented by counsel.

Finally, to the extent Hendrix generally is arguing that the district court erred in granting summary judgment as to her claims of disparate treatment and retaliation relating to her suspension, Title VII prohibits employers from discriminating "against any individual with respect to his compensation,

terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). It also is unlawful under Title VII for an employer to retaliate against an employee "because [the employee] has opposed any practice made an unlawful employment practice . . . or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter [of Title VII]." 42 U.S.C. § 2000e-3(a).

Where direct evidence of discrimination or retaliation is unavailable—as was the case here—a plaintiff may present circumstantial evidence of discrimination sufficient to create a jury question. Silvera v. Orange County School Bd., 244 F.3d 1253, 1258 (11th Cir. 2001) (Title VII disparate treatment); Sullivan v. National Railroad Passenger Corp., 170 F.3d 1056, 1059-60 (11th Cir. 1999) (Title VII retaliation). For claims based on circumstantial evidence, the plaintiff bears the initial burden of establishing a prima facie case of discrimination. Silvera, 244 F.3d at 1258. If the plaintiff is successful, the defendant must "articulate some legitimate, nondiscriminatory reason for the [adverse employment action]." Id. The plaintiff then may attempt to demonstrate that the proffered reason was, in fact, merely pretext for the defendant's acts. Id.[8] "The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." Id.

"A plaintiff establishes a prima facie case of disparate treatment by showing that she was a qualified member of a protected class and was subjected to an adverse employment action in contrast with similarly situated employees outside

---

8 The Supreme Court set out this three-part burden-shifting framework in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973), and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254-55, 101 S.Ct. 1089, 1093, 67 L.Ed.2d 207 (1981).

the protected class." Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1087 (11th Cir. 2004). To show that employees are similarly situated, the plaintiff must establish that the employees are "similarly situated in all relevant respects." Id. at 1091 (quotation omitted). Indeed, the comparator employee "must be nearly identical to the plaintiff to prevent courts from second-guessing a reasonable decision by the employer." Id. (citing Silvera, 244 F.3d at 1259). Because Hendrix failed to identify in her amended complaint or her response to the Secretary's summary judgment motion a comparator employee, much less explain why the employee was similarly situated, the court did not err in concluding that she failed to establish a prima facie case of disparate treatment.

To the extent Hendrix also was attempting to establish a prima facie case of Title VII retaliation, a successful plaintiff must show that (1) she engaged in statutorily protected expression; (2) she suffered an adverse employment action; and (3) the adverse action was causally related to the protected expression. See Cooper v. Southern Co., 390 F.3d 695, 740 (11th Cir. 2004), cert. denied, 126 S.Ct. 478 (2005). As the district court discussed, Hendrix conceded, and the record reflects, that she had not filed any EEO complaints prior to her June 1996 suspension. Moreover, Hendrix has failed to identify any other statutorily protected expression. Thus, the district court also did not err in concluding that Hendrix failed to establish a prima facie case of Title VII retaliation. We, therefore, conclude that the district court properly granted the Secretary's motion for summary judgment on all of Hendrix's Title VII claims.

Issue 2: Claims under the Whistleblower Protection Act

Hendrix argues that the court erred in concluding that she did not exhaust her administrative remedies as to her WPA claims because she made a good-faith attempt to exhaust them by submitting a claim to the OSC. Hendrix also contends that, due to her previous filing of an EEO complaint, she reasonably believed that she could not seek review before the MSPB.

The WPA provides protection to federal employees against agency reprisal for whistleblowing activities, such as disclosing illegal conduct, gross mismanagement, gross waste of funds, or acts presenting substantial dangers to health and safety. See 5 U.S.C. § 2302(b)(8). To the extent Hendrix's brief can be construed as arguing that the district court erred in dismissing her WPA claims based on its determination that the CSRA provides the exclusive remedy for those claims, the district court, in fact, correctly explained that the WPA was an amendment to, and, thus, a part of the CSRA, and it considered her WPA claims under the procedural framework of the CSRA, see Broughton v. Courtney, 861 F.2d 639, 643 (11th Cir. 1988) (the CSRA provides the exclusive procedure for challenging federal personnel decisions). Indeed, although we have not previously directly addressed this issue, the D.C. Circuit has concluded that, "[u]nder no circumstances does the WPA grant the district court jurisdiction to entertain a whistleblower cause of action brought directly before it in the first instance." See Stella v. Mineta, 284 F.3d 135, 142 (D.C. Cir. 2002).

Under the CSRA, after a federal employee alleging a WPA violation files her claim with the OSC, the OSC investigates and may petition the MSPB on the employee's behalf if the OSC finds a violation. 5 U.S.C. §§ 1214(a)(3), 1221. If the OSC finds no violation, the employee, herself, may seek review before the MSPB. Id. The decision of the

MSPB then is appealable to the Federal Circuit. 5 U.S.C. § 7703. However, as discussed in Issue 1, if the employee raises a "mixed case claim," that is, one alleging both WPA and Title VII claims, the employee may seek relief either by filing a complaint with the agency's EEO department, or by appealing directly to the MSPB. 5 U.S.C. § 7702.

Here, Hendrix failed to include in any of her EEO complaints what disclosures she made that she now contends were protected under the WPA. See Willis v. Dep't of Agriculture, 141 F.3d 1139, 1144 (Fed. Cir. 1998) (explaining as persuasive authority that an employee failed to exhaust his administrative remedies when he failed to set forth the disclosures he believed were protected). Thus, to exhaust her administrative remedies, Hendrix was required to seek review of the OSC's decision before the MSPB. See 5 U.S.C. §§ 1214(a)(3), 1221. Because the OSC issued a decision dismissing Hendrix's WPA claims, and because Hendrix did not seek review of this decision with the MSPB, the district court correctly determined that she failed to exhaust her administrative remedies. Cf. Kelliher v. Veneman, 313 F.3d 1270, 1274 (11th Cir. 2002) (concluding that district court had jurisdiction to review a "mixed case claim" where the employee had exhausted his claims before the MSPB).

Furthermore, to the extent Hendrix is arguing for the first time on appeal that the district court should have equitably tolled these exhaustion requirements because she was confused by notices she received based on her concurrent filings with the EEO, we decline to review this legal argument for the first time on appeal. See Four Seasons Hotels, 377 F.3d at 1168-69. Regardless, even if we were to conclude that principles of equitable tolling were applicable to relieve Hendrix from her failure to exhaust her WPA claims, see Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393, 102 S.Ct. 1127, 1132, 71 L.Ed.2d 234 (1982) (holding that the prerequisite of timely contacting an EEO counselor

is subject to waiver, estoppel, and equitable tolling), Hendrix has failed to explain why, despite any misunderstandings she might have had based on notices she received regarding her concurrent filings of EEO complaints, she attempted, but could not discover, the proper method for exhausting her remedies. Thus, she failed to show she was entitled to this remedy. The district court, therefore, also did not err in granting the defendants summary judgment as to Hendrix's WPA claims.

Issue 3: Section 1985(1) claim

Hendrix argues that the district court erred in concluding that her § 1985(1) claim was preempted by the CSRA. Relying on the fact that 26 U.S.C. § 7804 was amended in 1998, she argues that she now has a right of action and that this right of action is in addition to her rights under Title VII and the WPA.

As the district court discussed in its order granting summary judgment, the CSRA protects federal civil servants "by an elaborate, comprehensive scheme that encompasses substantive provisions forbidding arbitrary action by supervisors and procedures—administrative and judicial—by which improper action may be redressed." Bush v. Lucas, 462 U.S. 367, 385, 103 S.Ct. 2404, 2415, 76 L.Ed.2d 648 (1983). The CSRA, thus, overhauled the civil service system and created anew framework for evaluating adverse employment actions against federal employees. United States v. Fausto, 484 U.S. 439, 443, 108 S.Ct. 668, 671, 98 L.Ed.2d 830 (1988).

Therefore, outside of Title VII claims, both the Supreme Court and this Court have concluded generally that the CSRA provides the exclusive procedure for challenging federal personnel decisions. Fausto, 484 U.S. at 443, 454-55, 108 S.Ct. at 671, 677 (holding that the comprehensive

nature of the CSRA precludes relief under the Back Pay Act, even though the employee was not entitled to judicial review under the CSRA); Broughton, 861 F.2d at 643 (explaining that "Congress intended the CSRA to provide an exclusive procedure for challenging federal personnel decisions"). Similarly, in Bush, the Supreme Court refused to allow a federal employee to maintain, under the First Amendment, a Bivens actions against the agency for which he worked. Bush, 462 U.S. at 388-90, 103 S.Ct. at 2417.

In Stephens v. Dep't of Health and Human Services, 901 F.2d 1571 (11th Cir. 1990), we examined whether the CSRA provided the exclusive remedy for a federal employee who was challenging alleged prohibited personnel practices through a Bivens action. See id. at 1572. Rejecting the employee's argument that, because the CSRA does not state that it is exclusive, we should not restrict judicial review, we determined that the CSRA was the plaintiff's exclusive remedy. See id. at 1575-76. We explained that, although a Bivens action is available where a plaintiff has no alternative means of obtaining redress and there are no "special factors counseling hesitation," we have not created additional Bivens remedies "when the design of a [g]overnment program suggests that Congress has provided what it considers to be adequate remedies for constitutional violations that may occur in the course of the program's administrations." See id. at 1577 (quotations and marks omitted); see also Lee v. Hughes, 145 F.3d 1272, 1273-74, 1277 (11th Cir. 1998) (holding that federal officer, who was excluded from CSRA review, could not bring, under the Fifth Amendment, a Bivens action); Hardison v. Cohen, 375 F.3d 1262, 1265-66 (11th Cir. 2004) (holding that medical resident of Department of Veteran Affairs could not bring a Bivens action for damages for wrongful discharge).

Although a review of our caselaw has not revealed authority directly addressing whether a federal employee may

challenge personnel decisions through a § 1985(1) claim, the Fourth Circuit in Hall v. Clinton, 235 F.3d 202 (4th Cir. 2000), determined, as persuasive authority, that a federal officer could not challenge what was essentially personnel decisions through civil actions brought under § 1985(1). See id. at 206. In reaching this conclusion, the Fourth Circuit recognized that the Supreme Court's holding in Bush, which dealt with the effect of the CSRA on the judicial implications of constitutional remedies, was distinguishable from the foreclosure of statutory claims. See id. Nevertheless, the Hall Court determined that "Congress intended that the CSRA would operate to the exclusion of all other statutory remedies for claims arising out of the federal employment relationship." See id. Applying this reasoning, as well as our analogous reasoning in denying Bivens claims relating to personnel problems, we conclude that the court did not err in determining that Hendrix's § 1985(1) claim challenging her employer's personnel decisions was preempted by the CSRA.

Furthermore, to the extent Hendrix is arguing that the court should have concluded that she had a private right of action, based on a 1998 amendment to 26 U.S.C. § 7804, this argument is without merit. Congress passed Public L.No. 105-206, 112 Stat. 685 (1998), § 1203(a), codified as a note to 26 U.S.C. § 7804, to authorize the Commissioner of the IRS to terminate any IRS employee for cause on charges of misconduct "if there is a final administrative or judicial determination that [the] employee [among other things, violated the federal constitutional rights of a taxpayer] in the performance of the employee's official duties." *Id.*, § 1203(a). "Any determination of the Commissioner of Internal Revenue under this subsection may not be appealed in any administrative or judicial proceeding." Id., § 1203(c)(3). Hendrix, however, has failed to cite authority in support of her claim that this section created a private right of action. Indeed, because § 1203(c)(3) bars judicial review of actions

taken under it, and given the statute's express non-delegable grant of discretion to the Commissioner of the IRS, Hendrix arguably would lack standing to bring a claim for relief under it even if she could show that Congress had create a right of action under it. See id. Moreover, as the defendants assert, Hendrix's last contested act, that is, her termination, occurred in January 1998, and Hendrix has failed to cite to authority showing that Congress intended for this statute be retroactively applicable. Thus, the district court did not err in granting the defendants summary judgment as to Hendrix's § 1985(1) claim.[9]

Issue 4: Tort claims

Hendrix argues that the district court erred by misapplying the standard of review applicable to summary judgment motions in reviewing the U.S. Attorney's scope-of-employment certification. Hendrix also specifically contends that the court erred by (1) holding a hearing to determine whether the individual defendants' acts were within the scope of their employment, and (2) restricting her testimony during that hearing to the period of time after the acts at issue occurred. Hendrix argues that the court's ultimate determination was erroneous because the alleged acts were intentionally taken and fell outside the scope of the individual defendants' employment. Finally, Hendrix contends that the court erred in concluding that, after the government was

9 Alternatively, we could affirm based on the fact that the defendants correctly argued in response to summary judgment that Hendrix's addition of her § 1985(1) claim in August 2001, was more than two years after her employment with the IRS was terminated in January 1998, and, thus, untimely. See Walker v. Mortham, 158 F.3d 1177, 1193 (11th Cir. 1998) (explaining that we "may affirm the district court where the judgment entered is correct on any legal ground regardless of the grounds addressed, adopted, or rejected by the district court"); Rozar v. Mullis, 85 F.3d 556, 561 (11th Cir. 1996) (holding that Georgia's two-year personal-injury limitations period applies to § 1985 claims).

substituted for the individual defendants, her tort claims against the government were preempted by the CSRA.

The remedy provided by the FTCA, as amended by the Westfall Act, to a plaintiff for an injury arising from acts of a federal employee who was acting within the scope of his employment, is "exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim." 28 U.S.C. § 2679(d)(1). Thus, upon the U.S. Attorney's certification of scope-of-employment, the action "shall be deemed an action against the United States . . ., and the United States shall be substituted as the party defendant." 28 U.S.C. § 2679(d)(2). However, both the Supreme Court and this Court have determined that, upon objection by the plaintiff, the Attorney General's scope-of-employment certification is reviewable by the district court. See Gutierrez de Martinez v. Lamagno, 515 U.S. 417, 436-37, 115 S.Ct. 2227, 2237, 132 L.Ed.2d 375 (1995); S.J. & W. Ranch, Inc. v. Lehtinen, 913 F.2d 1538, 1543 (11th Cir. 1990). Indeed, we concluded in S.J. & W. Ranch that, because the district court's review of the issue of scope of employment is de novo, remand was necessary for the district court to conduct an evidentiary hearing. See S.J. & W. Ranch, 913 F.2d at 1543-44.

In conducting this de novo review, "[t]he question of whether a given act falls within the scope of employment is highly fact-specific, and turns on the unique circumstances of the case at bar." Bennett v. United States, 102 F.3d 486, 489 (11th Cir. 1996). "The burden of altering the status quo by proving that the employee acted outside the scope of employment is . . . on the plaintiff." Flohr v. Mackovjak, 84 F.3d 386, 390 (11th Cir. 1996) (quotation and marks omitted). Moreover, "[t]he question of whether an employee's conduct was within the scope of his employment is governed by the law of the state where the incident occurred." Id.

Under Georgia law, the law applicable in the instant action, "[e]very person shall be liable for torts committed by his . . . servant by his command or in the prosecution and within the scope of his business, whether the same are committed by negligence or voluntarily." O.C.G.A. § 51-2-2. An employer is liable for negligent or intentional torts committed by an employee only if the torts were committed in furtherance of, and within the scope of, the employer's business. Piedmont Hospital, Inc. v. Palladino, 580 S.E.2d 215, 217 (Ga. 2003). Indeed, an employer may not be held liable for the wilful or malicious acts of an employee if these acts were not in the course of his employment and within its scope, and the fact that the employee had some personal motive is immaterial. Andrews v. Norvell, 15 S.E.2d 808, 810-11 (Ga. Ct. App. 1941).

On the other hand, an employer cannot be held liable on the basis of respondeat superior if the employee's acts (1) were committed for purely personal reasons associated solely with the employee's own gratification, and (2) were entirely disconnected from the scope of the employee's employment. Piedmont Hospital, 580 S.E.2d at 217. The Georgia Supreme Court concluded in Piedmont Hospital that the hospital was not vicariously liable under the theory of respondeat superior to a patient for a hospital employee's alleged misconduct in manipulating the patient's genitals during the patient's hospital stay because (1) these acts were committed for purely personal reasons associated solely with the employee's own gratification, and (2) were entirely disconnected from the scope of the employee's employment with the hospital. Id.

Applying this law in the instant case, the district court properly conducted a de novo evidentiary hearing after Hendrix objected to the Attorney General's certifications of scope-of-employment. See Gutierrez, 515 U.S. at 436-37, 115 S.Ct. at 2237; S.J. & W. Ranch, 913 F.2d at 1543. During this hearing, Hendrix contended that the individual defendants:

(1) made defamatory statements to an Assistant U.S. Attorney, for the purpose of having Hendrix criminally prosecuted; (2) improperly used an alternative ranking system to deny Hendrix a position as an IE; (3) improperly gave favorable tax treatment to persons in exchange for negative letters relating to Hendrix; (4) retaliated against Hendrix by changing her employment records and interfering with investigations; (5) misled a U.S. Senate oversight committee and prematurely ended an investigation; (6) harassed her after she was reassigned to another group within the IRS; (7) attempted to have her fired by placing her in situations where she would improperly disclose taxpayer information; and (8) continued to harass her after her employment with the IRS terminated.

As the district court determined, however, these alleged tortious acts, unlike the facts in Piedmont Hospital, involved personnel decisions and acts Hendrix's supervisors took in furtherance of, and within the scope of, the IRS's business. See Piedmont Hospital, 580 S.E.2d at 217. Thus, even assuming as true Hendrix's contention that at least some of the individual defendants acted maliciously, the acts were committed within the scope of the defendant's employment and the defendant's intent was immaterial. See Andrews, 15 S.E.2d at 810.

Finally, after substituting the government for the individual defendants, the district court properly concluded that summary judgment was warranted as to Hendrix's tort claims against the government. As discussed in Issue 3, outside of Title VII claims, the CSRA provides the exclusive procedure for challenging federal personnel decisions. See Fausto, 484 U.S. at 454-55, 108 S.Ct. at 677; Broughton, 861 F.2d at 643. Indeed, in Broughton, we examined a federal employee's state tort law claims alleging malicious interference with employment and conspiracy to interfere with employment, and determined that it fell within the

scope of prohibited personnel practice as addressed in 5 U.S.C. § 2302(b), and concluded, therefore, that it was preempted by the CSRA. See Broughton, 861 F.2d at 640-44. Because the alleged tortious acts Hendrix identified during the evidentiary hearing are all prohibited under the CSRA, these acts, similar to those alleged in Broughton, were preempted by the CSRA. See 5 U.S.C. § 2302(b)(1)(A) (prohibiting personnel- practice discrimination in violation of Title VII); 5 U.S.C. § 2302(b)(2) (prohibiting the solicitation of any recommendation or statement with respect to an individual who is under consideration for a personnel action except as specifically provided); 5 U.S.C. § 2302(b)(4) (prohibiting willful obstruction of any person with respect to that person's right to compete for employment); 5 U.S.C. § 2302(b)(8) (prohibiting retaliation for protected disclosures of information). Thus, the district court also did not err in granting the defendants summary judgment on Hendrix's tort claims.

Accordingly, we conclude that the district court properly granted summary judgment as to all of Hendrix's claims in her Third Amended Complaint. We, therefore, affirm.

AFFIRMED.

B

Case 1:97-cv-03579-RWS Document 251 Filed 02/22/2005

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SARAH HENDRIX,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. 1:97-CV-3579-RWS
JOHN SNOW, Secretary of the Department of Treasury of the United States of America, et al.,	:	
Defendants.	:	

ORDER

Now before the Court for consideration are Defendant United States' Motion to Dismiss or for Summary Judgment [207-1], Defendant John W. Snow's Motion for Summary Judgment [209-1], Defendants Ty Ayers, Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, and Richard Byrd's Motion for Summary Judgment [211-1] and Defendants' Motion to Strike Plaintiff's Documents filed January 7, 2005 [246-1]. After considering the entire record and the arguments of the parties, the Court enters the following Order.

Factual Background

This case arises out of Plaintiff Sarah Hendrix's employment with the United States Department of the Treasury, Internal Revenue Service ("IRS") where she was employed as a Revenue Officer. (Pl.'s Compl. [1] ¶ 2.) The procedural history of this case is long and complex and is set forth in detail in this Court's Order entered June 30, 2004 (the "June 30 Order"). The Court will not repeat it here except as necessary. The following facts are taken from Plaintiff's Complaint and amendments thereto. Additional facts are incorporated into the following discussion.

Plaintiff's trouble began when she requested and received a transfer from the Manhattan District to the Georgia District of the IRS in 1994. (Id. ¶ 4.) Plaintiff, a white female, contends that shortly after her arrival and continuing through her employment, she was harassed and discriminated against because of her race and sex. (Id.) She also contends that she was retaliated against for making complaints and was wrongfully suspended in June 1996 (id. ¶ 5), and wrongfully terminated in January 1998. (Pl.'s Am. Compl. [12] ¶ 9.) Specifically, Plaintiff states that she was discriminated against

> with respect to compensation, working conditions, disciplinary actions, and employment opportunities by denying her application for positions for which she was and is qualified, by intentionally misusing an alternate ranking system in order to deny her the sought after position, denying Plaintiff benefits (Flexiplace and others) accorded other employees and giving Ms. Hendrix a false and negative performance evaluations [sic] in order to give a position to a black male who is not a CPA and was not qualified for the position . . . and by terminating and retaliating against Ms. Hendrix for complaining about discrimination against her and others.

(Pl.'s Second Am. Compl. [71] ¶ 11.) Plaintiff also asserts that Defendants retaliated against her for complaining about discriminatory acts taken by Defendant, filing complaints through the administrative process, contacting members of Congress, publicly speaking about discriminatory practices in the IRS, and contacting the news media about Defendants' actions. (Id. ¶ 17.)

Plaintiff filed numerous complaints with various agencies including the Equal Employment Office ("EEO") of the Department of the Treasury and the Office of Special Counsel ("OSC").[1] She also filed grievances through the National Treasury Employees Union ("NTEU").[2]

I. Plaintiff's First EEO Complaint

Plaintiff first sought counseling from the Department of the Treasury EEO on June 6, 1996. (Defs.' Ex. 40.)[3] She filed her first complaint before the EEO, complaint number 96-2290MT, on August 5, 1996. (Defs.' Ex. 42.) In her complaint, Plaintiff asserted six primary claims.[4]

---

number since the paragraphs of the affidavit are not individually numbered.

1 Plaintiff filed three separate responses to the three Motions for Summary Judgment filed by Defendants at docket numbers [238], [239], and [240]. Plaintiff filed a single set of exhibits as an attachment to these responses. The exhibits include a thirty-two page affidavit by Plaintiff and exhibits thereto. For simplicity, the Court will refer to these exhibits "Hendrix Aff. Ex. __." References to Plaintiff's affidavit will be to the page.

2 Plaintiff filed grievances through the NTEU in late 1995 through early 1996. (See Hendrix Aff. Exs. 42, 43, 48, 72, 93.) Neither party has addressed the specifics of Plaintiff's grievance complaints.

3 Defendants' evidence in support of their Motions for Summary Judgment are filed at docket numbers [207] and [211] with exhibits one through four filed at [207] and the remainder filed at [211]. For simplicity, the Court will refer to Defendants' exhibits as "Defs.' Ex. __."

4 Plaintiff identified eighteen individual issues. The EEO combined several of Plaintiff's individual issues into a more general claim for harassment from September 1995 until April 1996.

(Id.) Plaintiff complained that: (1) upon her January 1994 transfer to the Georgia District, she did not receive a position as an International Examiner which she was promised and that she was downgraded in her position; (2) that in April 1994 she was not advised that she could have been subject to criminal prosecution for providing false information regarding financial obligations; (3) that in April 1995 she was denied selection for an International Examiner position; (4) that she was subject to various instances of harassment from September 1995 until April 1996; (5) that on January 30, 1996, she was given a poor annual evaluation; and, (6) in July 1996, she was wrongfully suspended for two weeks. (Id.) Plaintiff's first EEO complaint specifically charged William Zachery, Mike McBride and Wanda Edmundson with wrongdoing.

The EEO requested that Plaintiff provide additional explanation regarding why she had not sought EEO counseling within the required time frame (forty-five days) of the alleged actions against her. Plaintiff responded in a letter dated December 13, 1996, that her allegations constituted a continuing pattern of illegal behavior, that she was under emotional distress from the death of her mother in January 1995, and that she did not learn of certain actions taken against her until she received replies to a Freedom of Information Act request. (Hendrix Aff. Ex. 89.) On January 15, 1997, Plaintiff was notified by the EEO that it was dismissing her claims one through five because they were untimely, explaining that she failed to seek counseling within the forty-five days required. (Hendrix Aff. Ex. 93; Defs.' Ex. 44.) The EEO concluded that the violations that Plaintiff complained of did not constitute a continuing pattern of

discrimination.[5] The letter notified Plaintiff that it constituted the final decision by the Department of the Treasury on the portions of her complaint which were being dismissed. Included with the letter was a notice of appeal rights which informed Plaintiff that she could file a civil action in district court within thirty (30) days or file an appeal with the Merit Systems Protections Board ("MSPB"). (Defs.' Ex. 44.) The notice specifically informed Plaintiff that she should not appeal with the Equal Employment Opportunity Commission ("EEOC"). Even so, Plaintiff appealed to the EEOC and received a letter by the EEOC dated March 17, 1997, acknowledging receipt of her appeal. (Hendrix Aff. Ex. 100.) By a letter dated October 30, 1997, the EEOC notified Plaintiff that it was dismissing her appeal because it had been filed in the wrong forum. (Defs.' Ex. 46.)

II. Plaintiff's Subsequent EEO Complaints

It is clear that Plaintiff filed additional EEO complaints after the first one, but the exact sequence of Plaintiff's subsequent EEO complaints is not evident from the record. On July 10, 1997, Plaintiff received a 60-day "opportunity letter," a letter which apparently permitted Plaintiff sixty days to improve her performance and provided that in the event she did not improve, she may be terminated. Plaintiff then filed another EEO complaint, complaint number

---

5 The EEO also rejected Plaintiff's contention that emotional distress prevented her from taking action and noted that she had filed numerous union grievances and conducted correspondence regarding those grievances during that time. The EEO further stated that Plaintiff had notice of her complaint prior to her Freedom of Information Act request. (Hendrix Aff. Ex. 93.)

97-1320, on July 24, 1997. (See Hendrix. Aff. Ex. 109.)[6] Although the record is not clear regarding the exact issues raised by Plaintiff in that complaint, by a letter dated August 27, 1997, the EEO dismissed Plaintiff's complaint because she had previously raised those issues in another proceeding. (Id.) Although Plaintiff contends that the EEO erroneously concluded that she had raised those issues, (Hendrix Aff. at 29; Ex. 110), there is no evidence that she ever appealed this ruling.

Plaintiff's was terminated effective December 29, 1997. (Defs.' Ex. 49.) On March 4, 1998, Plaintiff filed another EEO complaint, complaint number 98-1171M, for wrongful termination. (Defs.' Ex. 50.)

III. Plaintiff's Complaint to the OSC

Plaintiff filed a complaint with the OSC on August 14, 1997. (Defs.' Ex. 3 at 93-98.) Plaintiff's complaint asserted that she had received the 60-day opportunity letter in retaliation for a letter she wrote on May 6, 1997. By a letter dated November 17, 1997, the OSC declined to investigate Plaintiff's charges of gender and race discrimination and retaliation because she had already asserted those complaints before the EEO. (Defs.' Ex. 3 at 84-86.) Furthermore, the OSC found that Plaintiff had failed to state a violation of §§ 2302(b)(8), 2302(b)(11) for retaliation related to whistleblowing activities. Plaintiff did not appeal this decision of the OSC to the MSPB.

---

6 Plaintiff's affidavit also asserts that she filed an EEO complaint number 97-1372. Plaintiff has not, however, referenced or attached a copy of that EEO complaint and the Court has not been able to identify it in the record. The only reference to that complaint is a memorandum from Plaintiff to Eva Kinnebrew indicating that she would withdraw the portion of her complaint raising wrongful termination, since she had not yet been terminated. (See Hendrix Aff. Ex. 117.)

Plaintiff filed her initial complaint [1] on November 28, 1997, and asserted claims under Title VII for race and sex discrimination and retaliation. On June 25, 1998, she filed an unopposed motion for leave to amend her complaint [10] to add her claim of wrongful termination. The Court granted Plaintiff's Motion for Leave to Amend by an Order dated July 20, 1998 [11]. The Court subsequently granted Plaintiff's motion for leave to file a second amended complaint (Order of August 9, 2001 [70] at 2.) Plaintiff's Third Amended Complaint was filed on August 13, 2004 [168].

Plaintiff's Complaint and amendments thereto assert claims against John Snow, in his capacity as the Secretary of the Department of Treasury, and current and former IRS employees including Wanda Edmundson, Michael McBride, Michael Butkovich, William Zachery, Ty Ayers, and Richard Byrd (collectively "Individual Defendants"). Plaintiff alleges: (1) discrimination and retaliation in violation of Title VII, 42 U.S.C. § 2000e; (2) violation of the Whistleblower Protection Act, 5 U.S.C. § 1221; (3) that Defendants engaged in a conspiracy to violate her civil rights in violation of to 42 U.S.C. § 1985(1); and (4) Intentional Infliction of Emotional Distress. Plaintiff has requested expenses of litigation, attorneys' fees and costs.

Discussion

As a preliminary matter, Defendants have moved to strike Plaintiff's documents filed on January 7, 2005 as untimely. Defendants Motion to Strike [246-1] is hereby **DENIED**.[7]

7 Defendants requested additional time to reply if the Court denied their motion to strike. Because the Court does not find that a reply is necessary, the Court will not permit additional time for a reply.

Plaintiff's claims arise out of her employment with the IRS and challenge actions taken against her in the course of her employment with a federal agency. Plaintiff has asserted claims against the United States and against current and former federal employees. Defendant United States has moved to dismiss Plaintiff's complaint, or in the alternative for summary judgment. Defendants John Snow and the Individual Defendants have also moved for summary judgment.

I. Procedural Standards

Federal Rule of Civil Procedure 12(b)(6) empowers the Court to grant a defendant's motion to dismiss when a complaint fails to state a claim upon which relief can be granted. In considering whether to grant or deny such a motion, the Court may look only to the pleadings. Fed. R. Civ. P. 12(b). In addition, the pleadings are construed broadly so that all facts pleaded therein are accepted as true, and all inferences are viewed in a light most favorable to the plaintiff. Cooper v. Pate, 378 U.S. 546, 546, 84 S. Ct. 1733, 12 L. Ed. 2d 1030 (1964); Conner v. Tate, 130 F. Supp. 2d 1370, 1373 (N.D. Ga. 2001). Thus, a motion to dismiss should be granted when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957); see Linder v. Portocarrero, 963 F.2d 332 (11th Cir. 1992). Motions to dismiss are disfavored and are rarely granted. Gasper v. La. Stadium & Exposition Dist., 577 F.2d 897, 900 (5th Cir. 1978); Woodham v. Fed. Transit Admin., 125 F. Supp. 2d 1106, 1108 (N.D. Ga. 2000).

In contrast, summary judgment is appropriate only

when the pleadings, depositions, and affidavits submitted by the parties show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court should view the evidence and any inferences that may be drawn in the light most favorable to the non-movant. Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970). The party seeking summary judgment must first identify grounds that show the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). The burden then shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

The Court will evaluate each of Plaintiff's causes of action as well as Plaintiff's request for fees and costs.

II. Title VII

Plaintiff has asserted claims for violations of Title VII, 42 U.S.C. § 2000e, in Counts I and II of her Complaint. Plaintiff contends that she was discriminated against on the bases of race and sex and that she was retaliated against for making EEO complaints.

Title VII provides the exclusive judicial remedy for claims of discrimination in federal employment. Brown v. Gen. Servs. Admin., 425 U.S. 820, 835, 96 S. Ct. 1961, 48 L. Ed. 2d 402 (1976). In Brown, the plaintiff was employed by the General Services Administration ("GSA") and alleged that he was discriminated against based on his race when he was denied promotions. Id. at 822. He filed a complaint with the EEO office of the GSA, received a final decision and

then attempted to file suit in federal district court forty-two days later. Id. at 823. The trial court dismissed the plaintiff's claim for failure to file within thirty days and the Supreme Court held that Title VII provided the exclusive remedy for the plaintiff's discrimination claims. The Court held that a plaintiff may not evade the rigorous exhaustion requirements and time limitations by putting a different label on the pleadings. Id. at 833. The Court further stated that "[i]t would require a suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading." Id. It is evident, therefore, that if Plaintiff seeks relief for discrimination in her federal employment, she must do so under Title VII.

Before Plaintiff may seek relief in federal court, she must first exhaust her administrative remedies by seeking relief before the agency that has allegedly discriminated against her. Brown, 425 U.S. at 832; Grier v. Sec'y of the Army, 799 F.2d 721, 724 (11th Cir. 1986). More than a mere technicality, the exhaustion requirement is part of the congressional design to vest in the federal agencies and officials engaged in hiring and promoting personnel the primary responsibility for maintaining nondiscrimination in employment. Id. (internal quotation omitted). Plaintiff filed numerous EEO complaints with the Department of Treasury. The Court finds that Plaintiff may proceed in this action solely as to her claim for discrimination regarding her fifteen day suspension, which was raised in EEO complaint number 96-2290MT and filed by Plaintiff on August 5, 1996.

In her first EEO complaint Plaintiff identified eighteen issues which were grouped into six claims by the

EEO.[8] The EEO dismissed all of Plaintiff's claims except the suspension claim by a final decision dated January 15, 1997. Plaintiff was notified that she could file an action in district court within thirty days or she could appeal the decision to the MSPB. Plaintiff did neither. Instead, Plaintiff appealed the decision to the EEOC, even though the notice specifically stated that she should not appeal the decision to the EEOC. By the time Plaintiff filed suit, in November 1997, the time period had long run for her to file an action in district court.[9] Therefore, any of Plaintiff's claims that were dismissed by the EEO in the January 15 Letter are time barred. Plaintiff's EEO complaint number 97-1320 was dismissed by a decision dated August 27, 1997. Even if the Court were able to identify the claims presented in that complaint, it would also be time barred.[10] Finally, Plaintiff's EEO complaint number 98-1171T was filed on March 4, 1998 and asserted a charge

8 Plaintiff filed both allegations of discrimination and objections to certain adverse employment decisions. Therefore, her complaint is a "mixed case" governed by 5 U.S.C. § 7702. McAdams v. Reno, 64 F.3d 1137, 1141 (8th Cir. 1995) ("A comprehensive statutory and regulatory scheme governs the processing of mixed cases.").

9 Plaintiff provides no explanation as to why she appealed to the EEOC rather than filing in district court or appealing to the MSPB, other than confusion regarding the proper agency with which to file. The Court is aware that the procedural requirements are complex. See McAdams, 64 F.3d at 1141 (noting that the "requirements for processing employment discrimination claims are complex and merit careful attention by a claimant"). The savings provision of 5 U.S.C. § 7702(f) may have permitted Plaintiff to proceed with an appeal to the MSPB after learning that she had filed with the wrong agency. See 5 U.S.C. § 7702(f) (stating that if an employee timely files an appeal with the wrong agency, the employee shall be treated as having timely filed the appeal as of the date it is filed with the proper agency). Nothing in that provision, however, even suggests that this would permit an untimely complaint before the district court. See Buckser v. E.P.A., 45 M.S.P.B. 274, 279 (1990) (stating that United States District Court is not an "agency" within the meaning of 5 U.S.C. § 7702(f)).

10 As discussed above, Plaintiff would have had thirty days within which to file in district court. Her initial Complaint in this action was not filed until November 28, 1997.

of wrongful termination. On June 25, 1998, Plaintiff filed a Motion for Leave to Amend her Complaint in this action to include the charge of wrongful termination. Pursuant to 5 U.S.C. § 7702, Plaintiff may file an action in district court on the 120th day following the filing of an EEO complaint if the agency has not yet issued a decision. 5 U.S.C. § 7702(e)(1)(A); see McAdams, 64 F.3d at 1142. Plaintiff filed her amended complaint 113 days after submitting her EEO complaint. By failing to await the decision of the EEO or waiting the required 120 days, Plaintiff has failed to exhaust her administrative remedies. See Matthews v. Brownlee, 347 F. Supp. 2d 1163, 1166-67 (M.D. Ala. 2004) (noting that plaintiff failed to exhaust administrative remedies where she withdrew her complaint early and proceeded to federal court).[11]

A. Discrimination

As stated above, the Court has found that Plaintiff exhausted her administrative remedies as to her claim that the fifteen day suspension she received in July 1996 was the result of discrimination based on race, sex or retaliation. Therefore, the Court reviews the merits of this claim under legal framework established under Title VII.

Title VII makes it unlawful to discriminate against any individual with respect to her employment because of the individual's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-(a). The United States Supreme Court outlined the requirements for proving employment

11 Plaintiff's Amended Complaint asserts that an individual from the EEO contacted Plaintiff's then counsel to permit her to file an Amended Complaint with the Court asserting the termination claim. Plaintiff has presented no authority, and the Court has found none, that would permit an agency to confer jurisdiction upon the Court where it is in derogation of the plain statutory language.

discrimination using circumstantial evidence in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Under the McDonnell Douglas analysis, a plaintiff first must establish a prima facie case of discrimination. Id. at 802; Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 254, 101 S. Ct. 1089, 67 L. Ed. 207 (1981); see Benson v. Tocco, Inc., 113 F. 3d 1203, 1207 (11th Cir. 1997) (plaintiff must produce sufficient evidence to support an inference that the employer based its decision on an illegal criterion to establish prima facie case).

First of all, the Court notes Plaintiff's almost wholesale failure to identify any specific facts in response to Defendants' Motions for Summary Judgment. To be sure, Plaintiff has filed voluminous exhibits and depositions with the Court. What she has failed to do, however, is to identify specific evidence in support of her assertions. For instance, in her brief in response to Defendants' Motion for Summary Judgment regarding claims under Title VII, Plaintiff states that she "counters almost every statement discussed under this topic with supportable facts in her Affidavit, in Plaintiff's Answers to First Set of Interrogatories and in Plaintiff's October 19, 2004 Deposition." (Pl.'s Opp'n to Def. Sec'y of the Treasury of the United States Mot. for Summ. J. [239] at 28.) She did not, however, actually support any of these alleged "specific facts" with citations to the record. It is not the Court's duty to comb the record to attempt to find reasons to deny a motion for summary judgment. Powers v. CSX Transp., Inc., 190 F. Supp. 2d 1284, 1286 n.2 (S.D. Ala. 2002); see Local Rule N.D. Ga. 56.1(B)(3) (stating that all documents and other record materials relied upon by a party shall be clearly identified for the court including where

appropriate, dates and specific page numbers).[12]

Plaintiff's complaint asserts disparate treatment on the basis of race and sex in violation of Title VII. To show disparate treatment, a plaintiff must show that she was similarly situated to others but was treated differently in spite of similar misconduct, the same workplace rules, and the same decision-making supervisor. Knight v. Baptist Hosp., Inc., 330 F.3d 1313, 1315 (11th Cir. 2003); see Holifield v. Reno, 115 F. 3d 1555, 1562 (11th Cir. 1992) (describing principles). Defendants contend that Plaintiff has failed to state a prima facie case because she has not identified a similarly situated employee outside of her protected class who engaged in similar conduct but who received more favorable treatment. The Court agrees. Plaintiff's claims for discrimination must fail because she has wholly failed to come forward with any evidence to support her assertion that she was discriminated against on the basis of race or sex. Plaintiff has not identified any other employee outside of her protected class who received more favorable treatment than she did nor has she come forward with any other evidence tending to support the inference that her suspension was based on protected characteristics under Title VII. Holifeld, 115 F.3d at 1562 ("If a plaintiff fails to show the existence of a similarly situated employee, summary judgment is appropriate where no other evidence of discrimination is present.").

Plaintiff has done nothing more than deny that she deserved the suspension. In her response to Defendants' Statement of Facts, she simply states "Plaintiff denies that she is guilty of either act" that allegedly warranted the

12 Even so, the Court has reviewed Plaintiff's affidavit and the supporting exhibits. Additionally, the Court has attempted to broadly construe Plaintiff's assertions and to locate the evidence that Plaintiff refers to generally in her papers where ever possible, even though the Court has no obligation to do so.

suspension. (Pl.'s Resp. to Defs.' Statement of Facts [240] ¶ 16.) Even if Plaintiff could show that she did not deserve to be suspended, she has failed to come forward with any evidence to suggest that the reason for the suspension was discriminatory. Plaintiff has presented no other evidence on discrimination as to her suspension claim. Even viewing the evidence in the light most favorable to Plaintiff, Summary Judgment is due to be granted as to this claim.

B. Retaliation

Plaintiff also contends that Defendants retaliated against her in violation of Title VII. To make a prima facie case for retaliation, a plaintiff must show: (1) she engaged in a statutorily protected activity; (2) her employer took an adverse employment action; and (3) the adverse employment action was causally related to the protected activity. Little v. United Techs., Carrier Transicold Div., 103 F.3d 956, 959 (11th Cir. 1997). In her response to Defendants' Statement of Material Facts, Plaintiff unequivocally states that she "had not filed any EEO complaints at the time of the 15-day suspension." (Pl.'s Resp. to Individual Defs. Statement of Material Facts [240] ¶ 16.)[13] Moreover, Plaintiff has not identified any other record evidence to demonstrate that she engaged in protected activity prior to the suspension. Therefore, the Court finds that summary judgment is due to be **GRANTED** as to Plaintiff's Counts I and II regarding violation of Title VII.

---

13 Plaintiff's suspension was proposed on March 18, 1996. (Defs.' Ex. 38.) Plaintiff did not even contact an EEO counselor before June 1996.

III. Whistleblower Protection Act

Plaintiff's Complaint asserts a claim against the United States and the Individual Defendants for violation of the Whistleblower Protection Act, 5 U.S.C. § 1221. Plaintiff contends that she was subjected to harassment, intimidation, and adverse personnel actions based on bona fide whistleblowing reports disclosing government mismanagement and wrongdoing. The Whistleblower Protection Act of 1989 ("WPA") amended the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 91 Stat. 1111 (1978) (codified in scattered sections of 5 U.S.C.) ("CSRA"). See Robinson v. Rubin, 77 F. Supp. 2d 784, 792-93 (S.D. Tex. 1999).[14]

Although it is unnecessary for the purpose of this discussion to trace the entire history of the CSRA, when it was created, the CSRA comprehensively overhauled the civil service system and created an elaborate new framework for evaluating adverse employment actions against federal employees. United States v. Fausto, 484 U.S. 439, 443, 108 S. Ct. 668, 98 L. Ed. 2d 830 (1988) (quoting Lindahl v. OPM, 470 U.S. 768, 773, 105 S. Ct. 1620, 84 L. Ed. 2d 674 (1985)). The CSRA protects federal civil servants "by an elaborate, comprehensive scheme that encompasses substantive provisions forbidding arbitrary action by supervisors and procedures– administrative and judicial– by which improper action may be redressed." Bush v. Lucas, 462 U.S. 367, 385, 103 S. Ct. 2404, 76 L. Ed. 2d 648 (1983).

---

14 Plaintiff, as an employee of the IRS, was subject to the CSRA. Plaintiff states in her Second Amended Complaint [71] that she was an employee in a "covered position" working in a "covered agency" and that the Defendants actions constitute "personnel actions." (See Second Am. Compl. ¶ 8-10.)

It is well-established that the CSRA provides the exclusive procedure for challenging federal personnel decisions. Broughton v. Courtney, 861 F.2d 639, 643 (11th Cir. 1988) ("Congress intended the CSRA to provide an exclusive procedure for challenging federal personnel decisions"); see Fausto, 484 U.S. at 447 (comprehensive nature of CSRA precludes relief under Back Pay Act, even though employee was not entitled to judicial review under CSRA); Bush, 462 U.S. at 388-89 (declining to create a new judicial remedy where Congress already created an elaborate remedial system). The exclusivity of the CSRA remedy likewise applies to claims brought pursuant to the WPA. "Under no circumstances does the WPA grant the District Court Jurisdiction to entertain a whistleblower cause of action brought directly before it in the first instance." Stella v. Mineta, 284 F.3d 135, 142 (D.C. Cir. 2002); Robinson, 77 F. Supp. 2d at 793 (stating that the WPA does not give an aggrieved employee the right to seek relief directly in federal district court).

Since it is evident that a plaintiff may not directly assert a cause of action before the district court under the WPA, the Court must next determine when judicial review of a WPA claim is proper. The WPA provides protection to federal employees against agency reprisal for whistleblowing activity, such as disclosing illegal conduct, gross mismanagement, gross waste of funds or actions presenting substantial dangers to health and safety. See 5 U.S.C. § 2302(b)(8); Stella, 284 F.3d at 142. An employee who believes that she has been the victim of an unlawful reprisal must first bring her claim to the OSC. Stella, 284 F.3d at 142. The OSC investigates and if it finds a violation it may petition the MSPB on her behalf, or if no violation is found the employee may decide to bring the action before the

MSPB. Id.; see 5 U.S.C. §§ 1221, 1214(a)(3). The decision of the MSPB is appealable to the Federal Circuit. 5 U.S.C. § 7703.

Plaintiff asserts that she has exhausted her administrative remedies by filing complaints with the OSC and the agency EEO department. Plaintiff contends that hers is a "mixed case" and that this Court may properly review her claims. In a "mixed case" involving both whistleblower and discrimination claims, an employee may choose to seek relief by filing a complaint with the agency's EEO department or by appealing directly to the MSPB. 5 U.S.C. § 7702; see Robinson, 77 F. Supp. 2d at 793.

Even though Plaintiff's EEO complaints may be considered to present a "mixed case" Plaintiff's WPA claims are not properly reviewable by this Court. First of all, Plaintiff never raised her whistleblower claims in any of the several EEO complaints she filed. In order to exhaust her remedies through the administrative process, Plaintiff is required to explicitly detail the specific disclosures she made that she contends were protected under the WPA. See Willis v. Dep't of Agriculture, 141 F.3d 1139, 1144 (Fed. Cir. 1998) (holding that employee failed to exhaust administrative remedies where he failed to explicitly raise disclosures he believed were protected in his original complaint). While Plaintiff's brief identified certain disclosures she contends were made to United States Congressmen and Senators, Plaintiff's complaints before the EEO do not detail these specific disclosures. (See Pl.'s Resp. to Individual Defs. Statement of Material Fact ¶ 15.) Moreover, Plaintiff admits that she did not exhaust her WPA claims before the EEO. She states that she "did not mention claims in violation of WPA because she was still trying to resolve issues in house at the

IRS at that time." (Id.)[15] Therefore, Plaintiff failed to exhaust her administrative remedies regarding her WPA claims before the EEO. Even if Plaintiff's complaint could be read to have raised these specific disclosures, as discussed above in relation to Plaintiff's Title VII claims, Plaintiff's petition before this Court to review her "mixed case" EEO complaints is untimely.

Plaintiff also contends that she has exhausted administrative remedies by filing her complaints with the Office of Special Counsel. Even assuming that Plaintiff could maintain concurrent actions for discrimination before the EEO department and whistleblower claims before the OSC and MSPB, this Court may not properly review the claims presented to the OSC. See Robinson, 77 F. Supp. 2d at 793 (dismissing plaintiff's claims because employee did not raise whistleblower claims in EEO complaints and did not seek administrative relief under the procedures set forth to appeal to the OSC and MSPB). Plaintiff's complaint with the OSC was filed August 14, 1997. By a letter dated November 17, 1997, the OSC dismissed Plaintiff's discrimination claims because she had already brought them in her EEO complaint. The OSC also dismissed her whistleblower claims because it found no basis for them. It is evident that Plaintiff's claims as filed directly with the OSC are not properly before this Court because Plaintiff never appealed the decision of the OSC. Even if she had appealed the OSC's finding that she was not entitled to relief, she would have been required to appeal that finding to the MSPB. Then, if the MSPB denied her relief, she would have been required to seek review

15 Plaintiff apparently relies on her claims before the OSC to demonstrate exhaustion.

before the Federal Circuit.[16] This Court has no basis to review Plaintiff's claims under the WPA. C.f. Kelliher v. Veneman, 313 F.3d 1270 (11th Cir. 2002) (district court had jurisdiction to review mixed case where employee had exhausted claims before the MSPB). Accordingly, Plaintiff's Count III is due to be **DISMISSED**.

16 Plaintiff contends that because hers was a "mixed case" she was not required to appeal to the MSPB. That may have been true if she had decided to pursue her WPA claims along with her discrimination claims in her EEO complaint. Plaintiff has admitted that she did not choose that route and only filed her WPA claims with the OSC. Having selected the manner in which to proceed, she is required to fully exhaust that administrative procedure, which does require an appeal to the MSPB prior to any judicial review. The fact that Plaintiff filed numerous overlapping complaints in various fora did not excuse her from fully exhausting the procedural routes she chose.

IV. Section 1985(1)

Plaintiff's Count IV asserts a claim for conspiracy to interfere with civil rights under 42 U.S.C. § 1985(1). Plaintiff contends that the Individual Defendants deprived her of her civil rights by acts of intimidation and bad faith and conspired to prevent her discharge of duties as an employee of a federal office.

Section 1985(1) proscribes conspiracies that interfere with the performance of official duties by federal officers. Kush v. Rutledge, 460 U.S. 719, 724, 103 S. Ct. 1483, 75 L. Ed. 2d 413 (1983). Plaintiff may not maintain a separate cause of action under 42 U.S.C. § 1985(1), however, because as the Court discussed above, the CSRA is the exclusive remedy for claims arising out of the federal employment relationship. The comprehensive administrative procedure set forth by Congress in the CSRA forecloses Plaintiff from bringing her claims arising out of the federal employment relationship under separate causes of action for violations of federal constitutional and statutory rights. Fausto, 484 U.S. at 455 (holding that comprehensive system for reviewing personnel action taken against federal employee prevents judicial review under the Back Pay Act); Bush, 462 U.S. at 386 (holding employee could not assert claim for damages for violation of First Amendment outside of CSRA); Hall v. Clinton, 235 F.3d 202, 206 (4th Cir. 2000) (CSRA precludes Bivens claims and claims under § 1985(1)); Stephens v. Dep't of Health and Human Servs., 901 F.2d 1571, 1576 (11th Cir. 1990) (CSRA is exclusive remedy and precludes Bivens claim); Wells v. Fed. Aviation Admin., 755 F.2d 804, 810 (11th Cir. 1985) (Bivens action for violation of Fifth Amendment precluded by remedies provided under CSRA); see Great Am. Fed. Sav. & Loan Ass'n v. Novotny, 442 U.S.

366, 99 S. Ct. 2345, 60 L. Ed. 2d 957 (1979) (holding that deprivation of a right under Title VII cannot be the basis for a cause of action under 42 U.S.C. § 1985(3)).[17]

Although the bulk of the above cited cases arose in the context of a plaintiff employee seeking to file suit against individuals for constitutional violations pursuant to a Bivens claim, the Court finds that a similar analysis precludes Plaintiff's claim under § 1985(1). In Hall v. Clinton, 235 F.3d 202 (4th Cir. 2000), the Fourth Circuit discussed the unavailability of a Bivens action in the federal employment context. Id. at 204. Recognizing that the prior cases dealt with alleged constitutional violations, the Fourth Circuit stated that "Congress intended that the CSRA would operate to the exclusion of all other statutory remedies for claims arising out of the federal employment relationship." Id. at 206. Therefore, the court held that the comprehensive grievance procedures of the CSRA implicitly repealed all other then-existing statutory rights of federal employees regarding personnel decisions. Id. The Court finds this reasoning persuasive, consistent with the law of the Eleventh Circuit, and holds that Plaintiff may not evade the procedural requirements of the CSRA by bringing her claim under 42 U.S.C. § 1985. Plaintiff's claim for violation of § 1985(1) is due to be **DISMISSED**.

---

17 Plaintiff's Response to Defendants' Motions for Summary Judgment suggest in various places that she may maintain Bivens actions against Individual Defendants. The authority cited above conclusively forecloses this avenue of relief to Plaintiff.

V. Intentional Infliction of Emotional Distress

Plaintiff's Count V asserts a state law tort claim for Intentional Infliction of Emotional Distress. On November 2, 2004, Defendant United States filed its Notice of Substitution of United States as Defendant for Tort Claims Against Individual Capacity Defendants ("Notice of Substitution") [205] pursuant to the Federal Employees Liability Reform and Tort Compensation Act of 1988 ("Westfall Act"), 28 U.S.C. § 2679. The Notice contains a Certification by the United States Attorney that the individual defendants were acting within the scope of their employment at the time of the incident or incidents giving rise to Plaintiff's claims. Plaintiff objected and the Court held an evidentiary hearing on February 8, 2005.

A. Scope of Employment

To determine whether an employee's conduct was within the scope of his employment, the Court must look to the law of the State where the alleged tortious conduct occurred. Flohr v. Mackovjak, 84 F.3d 386, 390 (11th Cir. 1996). The plaintiff bears the burden of establishing that the challenged conduct exceeded the scope of employment. S.J. & W. Ranch, Inc. v. Lehtinen, 913 F.2d 1538, 1543 (11th Cir. 1990). The district court reviews the matter de novo. Id.

Under Georgia law, in order to show that an employee is acting within the scope of employment, two elements must be shown. Piedmont Hosp., Inc. v. Palladino, 580 S.E.2d 215, 217 (Ga. 2003). First, the employee must be acting in furtherance of the employer's business. Id. Second, the employee must be acting within the scope of the employer's business. Id. If, however, a tortious act is committed for

purely personal reasons which are disconnected from the authorized business of the employer, the employee is not acting within the scope of employment. Id. Moreover, under Georgia law, an employer may be liable for the wilful or malicious acts of an employee done in the course of his employment and within its scope, although they are not done at the express direction of the employer or with his assent. Andrews v. Norvell, 15 S.E.2d 808, 810 (Ga. Ct. App. 1941).

At the hearing, Plaintiff set forth eight alleged tortious acts by the Individual Defendants which she contends were outside the scope of their employment. Plaintiff alleged that: (1) Defendants made defamatory statements to an Assistant United States Attorney in order to have her criminally prosecuted; (2) Defendants improperly used an alternate ranking system to deny her a position as an International Examiner; (3) Defendants engaged in a quid pro quo by exchanging favorable tax treatment to individuals for negative letters regarding Plaintiff; (4) Defendants retaliated against Plaintiff by changing records and interfering with investigations; (5) Defendants misled a United States Senate oversight committee and prematurely ended an investigation; (6) a prior manager harassed her after she was moved to another group within the IRS; (7) Defendants attempted to set-up Plaintiff to be fired by placing her in situations where she would improperly disclose taxpayer information; and (8) Defendants continued to harass her after the end of her employment with the IRS.[18]

---

18 Plaintiff filed a supplemental affidavit after the hearing, docket no. [250]. In her supplemental affidavit, Plaintiff identifies twelve (12) "specific acts" which she contends were actions taken by the Individual Defendants outside the scope of their employment. These "specific acts" include the eight identified at the hearing and other instances Plaintiff recounted at the hearing. The Court has carefully considered Plaintiff's supplemental affidavit but finds that it is not necessary to elaborate on the specific grounds identified therein, because the allegations are substantially the same as those brought forward at the hearing.

Georgia courts have generally held that where an employee was at his employer's place of business and was generally engaged in doing the type of work for which he was hired, whether he was acting in the scope of employment is a question of fact. Miller v. Honea, 294 S.E.2d 629, 630 (Ga. Ct. App. 1982).[19] In that case, the plaintiff made disparaging remarks to the defendant regarding the defendant's performance as a union representative and an altercation between the plaintiff and defendant ensued. Id. at 629. The Georgia Court of Appeals recognized that the harsh words which provoked the assault arose out of the plaintiff's criticism of the defendant in his job duties and held that whether the resulting assault was in the scope of the defendant's employment was a question of fact. Id. at 630. "The theory that one may be a servant one minute, and the very next minute step aside and act in his individual capacity, and then the next minute step back into his capacity as a servant is too refined a distinction." Andrews, 15 S.E.2d at 811. When an employee is engaged in the furtherance the employer's business, it is immaterial that he join in some private purpose of his own. Id. The joining of some personal motive with the business of the employer is not alone sufficient to make that action "purely personal" such that the employee is acting outside the scope of his employment. Miller, 294 S.E.2d at 630; see Reynolds v. L & L Mgmt., Inc., 492 S.E.2d 347 (Ga. Ct. App. 1997) (not purely personal

19 In the usual case examining scope of employment, a plaintiff is attempting to establish respondeat superior liability for the employer and is therefore attempting to demonstrate that an employee was acting within the scope of their employment. Here, Plaintiff finds herself in the position of contending that the Individual Defendants are acting outside the scope of their employment. While the cases cited refer to fact questions, in this inquiry the Court is the fact finder. See Borneman v. United States, 213 F.3d 819, 827 (4th Cir. 2000) ("[I]t is for the district court to weigh the sufficiency of the evidence, to determine whether genuine issues of fact exist and ultimately to resolve these factual issues.").

when fast food restaurant manager slammed his fist down on a stack of trays which hit plaintiff customer in the face during argument involving personal comments). By contrast, Georgia Courts have generally held that an individual acts for a purely personal motive when he engages in sexual misconduct and that such actions are not not in furtherance of the employer's business. See Palladino, 580 S.E.2d at 217 (collecting cases).

Based on the Court's review of Plaintiff's evidence, including Plaintiff's affidavit and supporting exhibits, Plaintiff's live testimony presented at the hearing, and Plaintiff's supplemental affidavit, the Court finds that Plaintiff has not demonstrated that Defendants were acting outside the scope of their employment at the time of the alleged tortious conduct. In fact, Plaintiff's complaints revolve entirely around actions taken by Defendants and decisions made by them which specifically involved Plaintiff's performance as an employee of the IRS. Defendants' actions in making personnel decisions including employee discipline, participating in investigations of employee wrongdoing and decisions regarding employee training and promotions are within the furtherance of the employer's business.[20] By under taking these actions, Defendants are engaged in nothing more than the performance of their duties as supervisors within the IRS. (See Defs.' Resp. in Opp'n to Mot. [249] and Exhibits thereto.)

Primarily, Plaintiff contends that the intentional nature of Defendants' actions take them outside the scope of their employment. She also maintains that they were outside

---

20 Defendants also filed supplemental declarations after the hearing [249]. The filings include declarations by the Individuals Defendants including attachments stating job descriptions.

the scope of employment because Defendants' actions were contrary to IRS policy, and they could have been disciplined or terminated for their actions. As to Plaintiff's contention regarding the intentional nature of the actions she contends were taken against her, the proper inquiry is not directed to the authority to commit the tort, but rather the authority to accomplish a purpose in pursuance of which a wilful tort is committed. Reynolds, 492 S.E.2d at 349. Therefore, even accepting as true that the actions taken against her were intentional, or even malicious, this alone does not take Defendants' actions outside the scope of their employment. Id. at 350 (the fact that a defendant's actions may have been mingled with personal motives or purposes does not automatically take their actions outside the scope of their employment when the employee's actions are done in the line of his duty and in the prosecution of the employer's work); see Gaylor v. Jay & Gene's Chrysler-Plymouth-Dodge, Inc., 358 S.E.2d 655, 656 (Ga. Ct. App. 1987) ("the fact that the alleged tort was intentional rather than negligent does not, in and of itself, preclude the doctrine of respondeat superior").

Additionally, Plaintiff asserts that Defendants' actions could subject them to discipline or termination by the IRS and consequently they were outside the scope of employment. In essence, Plaintiff's arguments do not suggest that the Individual Defendants' actions were not part of their duties as IRS employees and supervisors, but rather that Plaintiff disagreed with the decisions that were made. For instance, Plaintiff contends that a black candidate was preselected for an International Examiner position for which she wished to apply. Plaintiff argues that she was more qualified for the position and then refers to regulations to suggest that employees may be terminated for

misconduct. (See Pl.'s Suppl. Aff. [250] at 17-19.) Plaintiff does not even contend that any of the named individuals was actually the person responsible for selecting the person for the International Examiner position. Nor has she alleged any personal motive or shown how the decision of which employee to select for an opening is outside the scope of employment of an IRS supervisor. In another complaint, Plaintiff contends that Defendants retaliated against her when she reported illegal and unethical conduct within the IRS to the news media and to members of Congress. There, Plaintiff complains that her immediate supervisor conducted frequent workload reviews of her work and instructed her to leave files at the office. Again, even though Plaintiff contends that these actions were taken for the purpose of inducing Plaintiff to quit her job, she has not identified any basis for these obviously job-related decisions to fall outside the scope of Ms. Edmundson's job as Plaintiff's direct supervisor.[21]

Though the Court does not find it necessary to identify and discuss each of Plaintiff's assertions, the Court has carefully reviewed each of the "specific acts" Plaintiff has identified in her submissions to the Court. The Court finds that Plaintiff has not demonstrated that the Individual Defendants were acting outside the scope of their federal employment. Moreover, Plaintiff's factual allegations completely fail to identify any allegedly tortious actions taken at all by some of the individual defendants. Since Plaintiff has not shown that the individuals were acting

---

21 The job description attached to Ms. Edmundson's declaration states that "The incumbent of this position exercises the following supervisory and managerial authorities: . . . 7. Develops performance standards and evaluates work performance of subordinates. . .9. Interviews candidates for positions in the unit; recommends appointment, promotion or reassignment to such positions. . ." (See Wanda Edmundson Decl. [249].)

outside the scope of their employment, the United States Attorney's certification is proper. Defendant United States is substituted for the Individual Defendants as to Plaintiff's claims for intentional infliction of emotional distress.

B. Claims against the United States

Having determined that the Individual Defendants were acting in the scope of their employment at the time of the alleged tortious conduct, Plaintiff may not maintain her claim for Intentional Infliction of Emotional Distress. In Broughton v. Courtney, 861 F.2d 639 (11th Cir. 1988), the Eleventh Circuit examined the CSRA and concluded that where a Plaintiff's state law claims are within the scope of coverage of the CSRA then those claims are preempted by the CSRA. Id. at 643. In Broughton, a federal employee sued two former supervisors for state law torts alleging malicious interference with employment and conspiracy to interfere with employment. Id. at 640. The Broughton court noted that the CSRA preempts challenges to personnel actions brought under federal law. Furthermore, the court stated that where state law creates an obstacle to the attainment of federal policy goals, the law is preempted. Id. at 642. The court examined the alleged tortious conduct, concluded that it fell within the scope of prohibited personnel practices as outlined in 5 U.S.C. § 2302(b), and held that it was therefore preempted by the CSRA. Id. at 644.

Plaintiff contends that Defendants resolved taxpayer disputes in favor of taxpayers who would write negative letters against her; that they destroyed official documents to cover up such activity; that they discriminated against Plaintiff in violation of Title VII; that they retaliated against Plaintiff for reporting violations to Congress and the media;

and that they deliberately inflicted emotional damage that affected her emotional and physical health. (See Pl.'s Resp. to Def. United States Mot. to Dismiss or Mot. for Summ. J. [238] at 15-16; Pl.'s Supp. Aff. [250].)

Section 2303(b) specifically identifies as a prohibited personnel practice discrimination in violation of Title VII. 5 U.S.C. § 2302(b)(1)(A). It also prohibits retaliation for disclosures of information that an employee reasonably believes constitutes a violation of the law, rule or regulation or gross mismanagement, gross waste of funds, abuse of authority, or a substantial danger to public health or safety. 5 U.S.C. § 2302(8). Moreover, § 2302(b) prohibits the solicitation of any recommendation or statement with respect to an individual who is under consideration for a personnel action except as specifically provided. 5 U.S.C. § 2302(2). Finally, § 2302(b)(4) prohibits the willful obstruction of any person with respect to that person's right to compete for employment. Id. at 643. Because Plaintiff's allegations supporting her state law tort claim constitute prohibited personnel actions as contemplated by § 2302(b), they are preempted by the CSRA. See McDowell v. Cheney, 718 F. Supp. 1531, 1546 (M.D. Ga. 1989) (dismissing plaintiff's claim for intentional infliction of emotional distress because her emotional distress was merely a result of other actions she complained about which were preempted by the CSRA). The fact that Plaintiff has asserted claims for intentional torts does not alter the Court's analysis. Broughton, 861 F.3d at 643-44 (noting that § 2302 includes a variety of actions otherwise characterized as torts under state law and stating that "[t]he fact that these are intentional torts does not mean that they are not included in 5 U.S.C. § 2302(b)."). Plaintiff's Count V is due to be **DISMISSED.**

VI. Attorneys Fees and Costs

Having determined that dismissal or summary judgment is proper as to Plaintiff's claims, Plaintiff is not entitled to recover attorneys' fees or costs.[22]

22 The Court notes that even though Plaintiff is represented by able counsel she has filed the supplemental affidavit herself. Moreover, it has come to the Court's attention, that on February 9, 2005 Plaintiff filed a Response to Defendant's Motion to Strike at docket number [248] where she signed the name of counsel without her attorney's express permission to do so. This kind of behavior is entirely unacceptable behavior before the Court. During these proceedings, Plaintiff has been repeatedly cautioned to comply with the proper procedure to communicate with the Court and to avoid improper ex parte communications.

This case has a long and winding procedural history, and the Court has chosen to take the considerable time to address this case on its legal merits, rather than dispose of it based on procedural missteps. The Court's desire to address the merits, however, is not meant to overlook this Court's disdain for misrepresentations made to it. Since this case is due to be closed, the Court declines to sanction Plaintiff at this time. Plaintiff is admonished to proceed in compliance with the Local Rules in any future communications and filings with this Court.

Conclusion

Defendant United States Motion to Dismiss or for Summary Judgment [207-1] is hereby **GRANTED**, Defendant John W. Snow's Motion for Summary Judgment [209-1] is hereby **GRANTED**, Defendants' Ty Ayers, Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, and Richard Byrd Motion for Summary Judgment [211-1] is hereby **GRANTED** and Defendants' Motion to Strike Plaintiff's Documents filed January 7, 2005 [246-1] is hereby **DENIED**. This case is hereby **DISMISSED**.

SO ORDERED this 22nd day of February, 2005.

/s/ Richard W. Story
RICHARD W. STORY
UNITED STATES DISTRICT JUDGE

C

C-1

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVEN... CIRCUIT
APR 14 2005
THOMAS K. KAHN
CLERK

No. 05-11583

SARAH E. HENDRIX,

Plaintiff-Appellant,

versus

JOHN SNOW, Secretary of the
Department of the Treasury of
the United States of America,
UNITED STATES OF AMERICA,
WANDA EDMUNDSON,
MICHAEL MCBRIDE,
JOHN BUTKOVICH, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia

Before TJOFLAT, WILSON and FAY, Circuit Judges.

PER CURIAM:

The petition for rehearing filed by Appellant, Sarah E. Hendrix is DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

CRD-41

D

D-1

Docket No. 97-03579-CV-RWS-1

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SARAH E. HENDRIX,
Plaintiff-Appellant,

vs.

JOHN SNOW, Secretary of the
Department of the Treasury of
the United States of America,
UNITED STATES OF AMERICA,
RICHARD BYRD, MICHAEL MCBRIDE,
JOHN BUTKOVICH, WANDA EDMUNDSON,
TY AYRES, and WILLIAM ZACHERY

USDC Civil Action No.:
1:97-CV-3579-RWS

Defendants-Appellees.

PETITION FOR REHEARING EN BANC OF PANEL'S FEBRUARY 8, 2006 ORDER

Sarah Hendrix
Pro Se Appellant/Plaintiff
134 Somerset Lane
Atlanta, GA 30328

E

E-1

United States Court of Appeals

Eleventh Circuit

56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

For rules and forms visit
www.ca11.uscourts.gov

June 01, 2006

Sarah E. Hendrix
134 SUMMERSET LANE
ATLANTA GA 30328-1663

Appeal Number: 05-11583-DD
Case Style: Sarah E. Hendrix v. John W. Snow
District Court Number: 97-3579 CV-RWS-1

The following action has been taken in the referenced case:

We have received your Petition for Rehearing, however the time for filing has expired. You will need to file a Motion for leave to file the Rehearing Out of Time.

Sincerely,
THOMAS K. KAHN, Clerk
Reply To: Elora Jackson (404) 335-6173

E-2

Docket No. 05-11583-DD

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SARAH E. HENDRIX,
Plaintiff-Appellant,

vs.

JOHN SNOW, SECRETARY
OF THE DEPARTMENT OF
TREASURY OF THE UNITED
STATES OF AMERICA,
RICHARD BYRD, MICHAEL MCBRIDE,
JOHN BUTKOVICH, WANDA EDMUNDSON,
TY AYRES, and WILLIAM ZACHERY

USDC Civil Action No.:
1:97-CV-3579-RWS

Defendants-Appellees.

APPELLANT'S MOTION FOR LEAVE TO FILE FOR REHEARING EN BANC OUT OF TIME

COMES NOW Appellant Sarah E. Hendrix (Appellant"), and files this Appellant's Motion for Leave to File for Rehearing En Banc Out of Time in response to the Court's request even though according to Appellant's understanding of the 11th Cir Rule 35, she had filed the Petition for Rehearing En Banc in a timely manner.

The *pro se* Appellant filed a Petition for Rehearing of the February 8, 2006 11th Circuit Court Order based on the numerous factual mistakes.

F

F-1

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

For rules and forms visit
www.ca11.uscourts.gov

June 15, 2006

Sarah E. Hendrix
134 SUMMERSET LANE
ATLANTA GA 30328-1663

Appeal Number: 05-11583-DD
Case Style: Sarah E. Hendrix v. John W. Snow
District Court Number: 97-3579 CV-RWS-1

The papers you recently submitted to this office are being returned for the reason stated.

Please disregard letter dated 6/1/06. Your petition for rehearing was denied 4/14/06. You may petition for certiorari to the United States Supreme Court.

Sincerely,
THOMAS K. KAHN, Clerk
Reply To: Regina Veals-Gillis (404) 335-6163

Encl.

Supreme Court, U.S.
FILED

3

06-781 JUL 13 2006

No. _____

OFFICE OF THE CLERK

IN THE

United States Supreme Court

SARAH HENDRIX,

Petitioner.

v.

HENRY PAULSON, SECRETARY OF THE DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, RICHARD BYRD, MICHAEL MCBRIDE, JOHN BUTKOVICH, WANDA EDMONDSON, TY AYRES and WILLIAM ZACHERY,

Respondents.

Appendix
Volume 2 of 2

On Petition for a Writ of Certiorari to the United States Court of Appeals for the 11th Circuit

PETITION FOR WRIT OF CERTIORARI

Sarah Hendrix
Pro Se
134 Summerset Lane
Atlanta, GA 30328
(770) 396-0716 (phone/fax)

July 12, 2006
Revised September 17, 2006
Revised November 22, 2006

Robert David Powell
Lori M. Bernek
US Attorney
Northern District GA
75 Spring Street, S.W.
600 U.S. Courthouse
Atlanta, GA 30303
(404) 581-6004
(404) 581-6350

APPENDIX G – J

G

Case 1:97-cv-03579-RWS Document 243 Filed 01/07/2005

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUDGE'S COPY
U.S.D.C. - Atlanta

SARAH HENDRIX,

Plaintiff,

vs

JOHN SNOW, Secretary of the Department of the Treasury of the United States of America, RICHARD BYRD, MICHAEL MCBRIDE, JOHN BUTKOVICH, WANDA EDMUNDSON, TY AYERS, and WILLIAM ZACHERY

Defendants

JAN - 7 2005
LUTHER D. THOMAS, Clerk
By. Deputy Clerk

Case No 1-97-CV-3579-RWS

PLAINTIFF'S RESPONSE TO DEFENDANTS' (RICHARD BYRD, MICHAEL MCBRIDE, JOHN BUTKOVICH, WANDA EDMUNDSON, TY AYERS AND WILLIAM ZACHERY) STATEMENT OF MATERIAL FACTS NOT IN DISPUTE (MATERIAL FACTS OVER WHICH PLAINTIFF CONTENDS THERE EXISTS A GENUINE ISSUE TO BE TRIED)

Comes now SARAH HENDRIX, Plaintiff in the above action and respondent to the pending Motions for Summary Judgment filed by all defendants and files this Response to Defendants' (RICHARD BYRD, MICHAEL MCBRIDE, JOHN BUTKOVICH, WANDA EDMUNDSON, TY AYERS, and WILLIAM ZACHERY) Statement of Material Facts Not In Dispute Plaintiff further states that this Response shall correlate numerically directly with Defendants' Statement

1. Plaintiff initiated this action on November 28, 1997, naming as the sole defendant her former employer, the Secretary of the Department of the Treasury ("Secretary").

DENIED – Plaintiff was still employed by the Internal Revenue Service when she filed her initial complaint with this Court Plaintiff was retroactively terminated on January 10, 1998 effective December 27, 1997.

2. Seven months later, on June 25, 1998, Plaintiff filed an unopposed motion to amend her complaint.

DENIED – The Amended Complaint was filed on June 20,1998.

3. Plaintiff's amended complaint, which was stamped filed on July 20, 1998, advances two causes of action pursuant to 42 U. S.C. a72000e-16 ("Title VI I"), alleging employment discrimination against the Secretary on the bases of race, sex, and retaliation.

DENIED – The Original Complaint advanced two causes of action pursuant to 42 U S C §2000e-16 ("Title VI I"), alleging employment discrimination on the bases of race, sex, and retaliation. The First Amended Complaint added wrongful termination.

4. On January 29, 2001, plaintiff sought to again amend her complaint and file a "Second Amended Complaint"

DENIED – Plaintiff also filed to reopen this case that had been stayed for 17 months due to misrepresentations made to the Court by Defendant's counsel.

5. Plaintiff ultimately was permitted to file that complaint, and filed it on August 13, 2001, adding six current or former government employees, Ty Ayers, Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, and Richard Byrd as defendants in their individual capacities, and adding claims against these defendants far violation of the Whistleblower Protection Act (Count Three), violation of 42 U S C a7 1985(1) (Count Four), intentional infliction of emotional distress (Count Five), and a state law claim for damages, attorney's fees, and costs (Count Six).

DENIED – Plaintiff sought to recover punitive damages, attorney's fees and costs under a state law claim and also other Federal avenues (Title VII, WPA). However, supplemental jurisdiction over the pendant State law claims was conferred upon this Court by 28 U S C. §1367 in the Second Amendment to the Complaint.

The Memorandum in Support of the Second Amendment to the Complaint clearly states – Paragraph 38: "Defendants conduct constitutes violations of Title VII, the Whistleblower Protection Act, intentionally caused her emotional distress, and are in bad faith, and on account thereof, Ms Hendrix may recover the expenses of this litigation, including, but not limited to, reasonable attorney's fees and costs, for which Defendants are liable to Ms Hendrix." [Doc # 49, Page 10]

Paragraph 39: "Defendants conduct has been in bad faith, stubbornly litigious and/or caused Ms. Hendrix unnecessary trouble and expense, and on account thereof, Ms. Hendrix is entitled to recover the expenses of this litigation, including but not limited to, attorneys' fees, for which Defendants are liable to Ms. Hendrix." [Doc. # 49, Page 10]

Paragraph 39 (g): "That as to Count One, Count Two, Count Three, Count Four, Count Five, and Count Six, Ms. Hendrix have and recover judgment in an amount to be determined at trial for expenses of this litigation, including, but not limited to, attorneys' fees and costs." [Doc. # 49, Page 11]

It is the purpose of Title VII to make persons whole for injuries suffered on account of unlawful employment discrimination. This is shown by the very fact that Congress took care to arm the courts with full equitable powers.

"The provisions of this subsection are intended to give the courts wide discretion exercising their equitable powers to fashion the most complete relief possible. The courts have stressed that the scope of relief under that section of this act is to make the victims of unlawful discrimination whole, and that the attainment of this objective rests not only upon the elimination of the particular unlawful employment practice complained of, but also requires that persons aggrieved by the consequences and effects of the unlawful employment practice be, as far as possible, restored to a position where they would have been were it not for the unlawful discrimination" Conference Committee Report of the 1972 Act, Albemarle Paper Co v. Moody, 422 U.S 405 (1975)

The most common relief available under Federal Whistleblower laws is a 'make whole remedy' in which an employee is entitled to injunctive relief and monetary compensation with the goal of being made 'whole.' 'Make whole' relief is justified not only as a logical method for determining amount of damages but also as a necessary tool in vindicating the public policy underlying antidiscrimination laws, "Making the workers whole for losses suffered on account of an unfair labor practice is part of the vindication of the public policy." Phelps Dodge Corp v. NLRB, 313 U S 177, 197 (1941)

Punitive Damages are awardable under a number of federal statutes, including the Whistleblower Protection Act and the Civil Rights Act of 1964. Punitive damages may be permitted to punish 'unlawful conduct' and deter its 'repetition,' BMW v. Gore, 517 U S 559, 568 (1996). The U S Supreme Court upheld an award of punitive damages "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others," Creekmore v. ABB Power Systems 93-ERA-24, Hobby v. Georgia Power Co, 90-ERA-30.

Congress passed the Civil Rights Attorney's Fees Awards Act of 1976, codified as 42 U S C. § 1988. Congressional intent was spelled out in the legislative history "[I]f private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court," S Rep 94-1001, at 3 (1976). "The purpose of § 1988 is to ensure effective access to the judicial process, for persons with civil rights grievances" Hensley v. Eckerhart, 461 U S 424, 429 (1983).

6. Plaintiff was also permitted to file her "Third Amendment to Complaint" on August 13, 2004, to amend Count Five to allege that "Plaintiff has complied with the Federal Tort Claims Act, 28 U S C a72675(a) by filing all appropriate administrative claims regarding the offending activities of the Defendants. Plaintiff has exhausted those administrative remedies available to her."

DENIED – Plaintiff bled the Third Amendment to Complaint in order to comply with Judge Story's July 30, 2004 Order [Doc # 165] The Third Amendment to the Complaint was filed with the Court on August 13, 2004 The parties named in this case by the Plaintiff are the Secretary of the Treasurer and the individually named Defendants not the United States government.

Thus, the Defendants that are subject to the FTCA are the Secretary of the Treasure *in his official capacity*, Mr. Byrd *in his official capacity*, Mr. McBride *in his official capacity*, Mr Butkovich *in his official capacity*, Ms. Edmundson *in her official capacity*, Mr. Ayres *in his official capacity*, and Mr. Zachery *in his official capacity*.

On October 2, 2004, Acting United States Attorney, Sally Quillian Yates, pursuant to 28 U.S.C. § 2679 and C.F.R. § 15.3 certified that the individually named Defendants were acting within the scope of their employment.

If the Certification is approved by the Court, the Defendants in this case are the United States, Mr. Byrd *in his unofficial capacity*, Mr. McBride *in his unofficial capacity*, Mr. Butkovich *in his unofficial capacity*, Ms. Edmundson *in her unofficial capacity*, Mr. Ayres *in his unofficial capacity*, and Mr. Zachery *in his unofficial capacity*.

Plaintiff has stated repeatedly in affidavits filed with this court that the individually named Defendants are guilty of unmoral and illegal acts that are outside the scope of an IRS employee's employment [Doc. # 134, 148, 206 and 214]. Plaintiff has also cited case law "held that under the Federal Tort Claims Act an injured person in a *nonautamobile* case may at his option sue the federal official responsible for injury *instead of OR in addition* to the government, and judgment against the individual officer does not preclude later action against the United States, although double recovery is impermissible. The provision of the Act requiring presentation of a claim to appropriate agency as a precondition to action against the United States does NOT apply where action is against the individual federal official" Turner v. Ralston 409 Fed. Supp 1260 (W Dist Wisc 1975), [Doc. # 162, Page 12].

Thus, the Plaintiff, although not required to 'present a claim to appropriate agency as a precondition, where action is against the individual federal official,' can show that, in fact, she did 'exhaust those administrative remedies available to her.'

7. Following the filing of the third amendment, plaintiff attempted to perfect service of the Second Amended Complaint and Third Amendment to the Complaint, along with the first two pleadings incorporated into those pleadings, on all defendants and served the United States Attorney for the Northern District of Georgia.

DENIED – Plaintiff did not effectuate service on any party Service was perfected by Michelle Filippou, a United States citizen over the age of eighteen and not a party to this action (See Affidavit of Michelle Filippou [Exhibit #1, Doc #204] and Affidavit of Plaintiff Sarah Hendrix [Exhibit #1]).

Service was effectuated on the United States Attorney for the Northern District of Georgia on August 13, 200 [Exhibit #2].

8. The Acting United States Attorney for the Northern District of Georgia issued certifications that each of the individual capacity defendants was acting within the scope of his or her employment with the United States Department of Treasury, Treasury Inspector General for Tax Administration ("TIGTA") or Internal Revenue Service ("IRS"), at the time of the acts or omissions attributed to each defendant in the allegations of the Complaint, as amended Those certifications were filed notice of the substitution of the United States for the individual capacity defendants us to all tort claims, by operation of 28 U.S.C. a72679.

DENIED – Plaintiff notes that she has objected to said designation and all parties are awaiting a ruling on same [Doc # 206, 214]. It is the Plaintiff's understanding that all individually named Defendants were employed by the United States Department of Treasury, Internal Revenue Service during the relevant time period [Exhibit #3]. TIGTA did not exist at the time that the named Defendants committed their illegal and immoral acts.

9. The only defendants now subject to plaintiff's tort claims are the United States and the Secretary of the Treasury.

DENIED – Plaintiff notes that she has objected to said designation and all parties are awaiting a ruling on same [Doc # 206, 214]. It is the Plaintiff's understanding that the individually named Defendants were employed by the United States Department of Treasury, Internal Revenue Service during the relevant time period [Exhibit #3]. TIGTA did not exist at the time that the named Defendants committed their illegal and immoral acts.

The parties named in this case by the Plaintiff are the Secretary of the Treasury and the individually named Defendants not the United States government Thus, the Defendants that

are subject to the FTCA are the Secretary of the Treasury *in his official capacity*, Mr. Byrd *in his official capacity*, Mr. McBride *in his official capacity*, Mr. Butkovich *in his official capacity*, Ms. Edmundson *in her official capacity*, Mr. Ayres *in his official capacity*, and Mr. Zachery *in his official capacity*.

On October 2, 2004, Acting United States Attorney, Sally Quillian Yates, pursuant to 28 U S C § 2679 and C F R § 153, certified that the individually named Defendants were acting within the scope of their employment.

If the Certification is approved by the Court, the Defendants in this case would be the United States, Mr. Byrd *in his unofficial capacity*, Mr. McBride *in his unofficial capacity*, Mr. Butkovich *in his unofficial capacity*, Ms. Edmundson *in her unofficial capacity*, Mr. Ayres *in his unofficial capacity*, and Mr. Zachery *in his unofficial capacity*.

10. Plaintiff, accompanied by another woman, attempted service on Ty Ayers and Wanda Edmundson on August 13, 2004

DENIED – Plaintiff did not effectuate service on any party Service was perfected by Michelle Filippou, a United States citizen over the age of eighteen and not a party to this action (See Affidavit of Michelle Filippou [Exhibit #1, Doc #204] and Affidavit of Plaintiff Sarah Hendrix [Exhibit #1])

11. Hendrix and her companion first appeared at the office of Mr. Ayers, at which time Hendrix identified herself and then proceeded to personally hand a package to Mr. Ayers.

DENIED – Plaintiff did not effectuate service on any party Service was perfected by Michelle Filippou, a United States citizen over the age of eighteen and not a party to this action (See Affidavit of Michelle Filippou [Exhibit #1, Doc #204] and Affidavit of Plaintiff Sarah Hendrix [Exhibit #1].

12. The package Hendrix handed to Mr. Ayers contained a summons, and order dated July 30th, 2004, and the Complaint and all amendments thereto.

DENIED – Plaintiff did not hand any packages to Mr. Ayres. Plaintiff did not effectuate service on Mr. Ayres. On August 13, 2004 service was perfected by Michelle Filippou, a United States citizen over the age of eighteen and not a party to this action (See Affidavit of Michelle Filippou [Exhibit #1, Doc #204 and Affidavit of Plaintiff Sarah Hendrix [Exhibit #1]. Copies of the Return of Service of Mr. Ayres was filed with the Court on August 20, 2004 [Doc #172] Mr. Ayers was personally served with a copy of 1) Judge Story's July 30, 2004 Order, 2) the Original Complaint, 3) the First Amendment to the Complaint, 4) the Second Amendment to the Complaint, 5) the Third Amendment to the Complaint, 6) the Summons, and 7) Instructions Regarding Pretrial Proceedings.

13 Later that day, Hendrix and her companion appeared at Ms. Edmundson's office, at which time Hendrix proceeded to personally hand a package to Ms. Edmundson that contained a summons, an order dated July 30, 2004, and the Complaint and all amendments thereto.

DENIED – Plaintiff did not effectuate service on Ms. Edmundson. Plaintiff did not hand any packages to Ms. Edmundson. Service was perfected by Michelle Filippou, a United States citizen over the age of eighteen and not a party to this action (See Affidavit of Michelle Filippou [See Affidavit of Michelle Filippou [Exhibit #1, Doc #204] and Affidavit of Plaintiff Sarah Hendrix [Exhibit #1].

Service was effectuated on Ms. Edmundson by Ms. Filippou within an hour of the time that service was effectuated on Mr. Ayers, a named Defendant, on August 13, 2004 [Doc 171].

Ms. Edmundson was personally served with a copy of 1) Judge Story's July 30, 2004 Order, 2) the Original Complaint,

3) the first Amendment to the Complaint, 4) the Second Amendment to the Complaint, 5) the Third Amendment to the Complaint, 6) the Summons, and 7) Instructions Regarding Pretrial Proceedings.

14. Plaintiff filed a formal discrimination complaint with the IRS's Equal Employment Opportunity office on August 5, 1996 (EEO-1).

DENIED – Plaintiff's first EEO complaint was *formally* filed on August 4, 1996. It was the Plaintiff's understanding that a formal complaint is filed with the Equal Employment Opportunity Commission.

15. In EEO-1, plaintiff identified 18 issues, none of which indicated that she claimed violation of the WPA.

ADMITTED WITH EXPLANATION – Plaintiff did not mention claims in violation of WPA because she was still trying to resolve issues in house at the IRS at that time.

16. The EEO office grouped plaintiff's issues into six claims and accepted only one claim investigation — plaintiff's claim that she was suspended for 15 days because of age, race, color, sex, and/or reprisal for prior EEO action.

DENIED – Plaintiff was suspended for 15 days due to alleged "disruption in the workplace" and alleged "not following management directives." Plaintiff denies that she is guilty of either act. Plaintiff had NOT filed any EEO complaints at the time of the 15-day suspension.

17. All other allegations raised in EE0971 were rejected as untimely in a financial agency decision dated January 15, 1997.

DENIED – The complaint number was 96-2290MT The MT indicates a mixed case. The January 15,1997 letter states that

"claims were dismissed because they were either untimely and/or were initiated through a negotiated grievance procedure prior to the filing of a formal EEO complaint." Plaintiff timely filed an appeal of the dismissal of the claims On March 17, 1997, the Equal Opportunity, Commission acknowledged receipt of the appeal [Exhibit 4].

18. The final agency decision for partial dismissal of claims advised plaintiff of her right to either file a civil action in district court or to appeal to the Merit Systems Protection Board ("MSPB").

DENIED – The complaint number vas 96-2290MT. The MT indicates a mixed case. The Plaintiff submitted her WPA complaints pursuant to the procedures governing investigation and enforcement of federal employees' whistleblower causes of action on 9/1/97, 5 U S C S § 1214(a)(1)(A).

The Plaintiff 's EEO complaints, which were filed first, determined the elected forum, 29 C F R 1614 302(b), See Leak v. Runyon, LEXIS 16706, at 4, note 3 (4th Cir 1996). The Plaintiff received a notice dated November 17, 1997 from OSC specifically declining to investigate the WPA complaint because she had filed EEO complaints.

The Plaintiff did not have to appeal the EEOC decision (or the WPA claim that is linked to the EECO claims as a mixed case) to the Merit Protection Board – "In the event that the matter at issue in the complaint is appeal able to the Merit Systems Protection Board, i.e., the matter is a mixed case, the Complainant may file a mixed case appeal with the MSPB OR may file a formal mixed case EEO complaint." The instructions specifically state "The Complainant may NOT file both an MSPB appeal and an EEO complaint on the same matter. The process selected first is deemed the elected process [§161 3Q2(b)]." Thus, there was no need to appeal the WPA clam with the MSPB in order to exhaust Plaintiff's administrative claims.

19. Plaintiff instead appealed the final agency decision dismissing untimely claims from EEO-1 to the Equal Employment Opportunity Commission, resulting in a decision dated October 30, 1997, dismissing her appeal because it was not filed in the proper forum.

DENIED – Plaintiff's second EEO complaint (# 97-1320) – not her first complaint (#96-2290MT) – was dismissed because "the matter alas raised in a negotiated grievance procedure that permits allegations of discrimination." NTEU denied that they had ever filed either "a grievance and/or complaint alleging illegal discrimination based on race, color, religion, sex, or national origin. Nor has the NTEU filed a complaint for Sarah relating to sexual harassment" [Exhibit 5].

20. Thereafter, on November 28, 1997, plaintiff filed her original complaint initiating this civil action.

DENIED – Plaintiff filed her initial complaint with this after receiving a Right to Sue letter from the EEOC.

21. On August 14, 1997, while her EEO-1 complaint was pending, plaintiff filed a complaint with Office of Special Counsel ("OSC") alleging that she suffered retaliation violation of the WPA by being issued a 60-day opportunity letter.

DENIED – The Plaintiff correctly submitted her WPA complaints pursuant to the procedures governing investigation and enforcement of federal employees' whistleblower causes of action on 9/1/97, 5 U S C S § 1214(a)(1)(A) to the Office of Special Counsel.

22. Plaintiff subsequently raised allegations of WPA violations concerning being placed on paid leave effective October 9, 1997, while her time ran for response to a notice of proposed termination (which led to termination of her employment).

DENIED – Plaintiff had raised all WPA violations when she was placed on administrative leave. She did, however, raise questions to the Office of Special Counsel about how thoroughly her WPA claims were investigated because the decision letter included many misstatements the least off which was that Plaintiff worked for the Department of Veteran Affairs not the Internal Revenue Service.

23. The OSC declined review, of plaintiff's claims covered by Title VII (race, gender, and retaliation for filing discrimination complaints) because she had already initiated the EEO complaint process (Defs 91 Ex 3 at 84-86). Plaintiff confirmed that she had initiated the EEO process concerning the 60-day opportunity letter.

DENIED – The Plaintiff correctly submitted her WPA complaints pursuant to the procedures governing investigation and enforcement of federal employees' whistleblower causes of action on 9/1/97, 5 U S C S § 3214(a)(1)(A) to the Office of Special Counsel. There is no ruling that states that Plaintiff could not raise her concerns about termination in the WPA forum. At the request of an EEO official, Ms. Kinnebrew, Plaintiff had removed her proposed termination claims from EEO consideration at the time of the filing of her WPA complaint [Exhibit 6].

24. The OSC, by decision dated November 17, 1997, also advised that it had decided to close its investigation into her WPA claim because it had determined that plaintiff failed to state a claim for violation of the WPA, Id. The OSC decision found that: From the information obtained it does not appear that you were subjected to violation of section 2302(b) (8). You allege that you made a protected disclosure when you stated in your EEO complaint of 5/21/97 that Mr. Ayres and Mr. Butkovich interfered with Senator Coverdell's investigation into the alleged fraud perpetrated by Ms. Edmonson. The information obtained does not support this contention. On the contrary, the facts reveal that neither Mr. Ayres nor Mr. Butkovich did anything to obstruct the Senator's inquires into this matter. While they did direct Senator Coverdell to send

any pertinent information concerning this matter to Mr. McBride, you presented nothing to suggest that a law, rule, or regulation was violated when they furnished Senator Coverdell with these directions. However, even if your disclosure were deemed to be protected, this matter would not constitute a violation of section 2302 (b) (8). We have no information to suggest that the official who proposed your removal (Mr. Valdez) had any knowledge of the statements you made in the EEO complaint. Moreover, there is nothing to suggest that the disclosure contributed to Valdez' decision to remove you. Indeed, you stated that at the time of the proposed removal your performance appraisals had been declining and that you had received below satisfactory ratings on more than one critical element in your most recent performance appraisals. Consequently, we have no basis for further inquiry into this matter as a possible violation of 5 U S C a7 2302(b)98).

DENIED – The above statement contains both incorrect quotes from the OSC decision letter and misquotes of the Plaintiff. The validity of the conclusions in the decision letter are suspect. In the same letter OSC states that Plaintiff worked for the Department of Veteran Affairs NOT the Internal Revenue Service. Plaintiff subsequently addressed her concerns about the accuracy of the OSC determination in a letter to the same agency.

This 5 day of January, 2005

W Darrin Keaton
Attorney for Plaintiff
GA Bar No 409998
27 Courthouse Square
Dallas, GA 30132
770-443-6060
770-443-5654 (fax)

G-15

Case 1:97-cv-03579-RWS Document 243 Filed 01/07/2005

AFFIDAVIT OF MICHELE FILIPPOU

STATE OF GEORGIA
DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
CASE # 97 cv 3579

I, Michelle Filippou, under penalties of perjury, make the following statement, understanding that it may and shalt be used in the above captioned case.

On August 13, 2004, I served Mr. Ty Ayres on the 31st floor of the Summit building, Atlanta, GA. On that same day, I also served Ms. Wanda Edmundson on the 15th floor of the same building.

In order to identify the individuals, Ms. Sarah Hendrix accompanied me to the Summit building that day. However, I am the individual who actually handed the packages to both Mr. Ayres and Ms. Edmundson. Ms. Hendrix did not hand the packages to either individual.

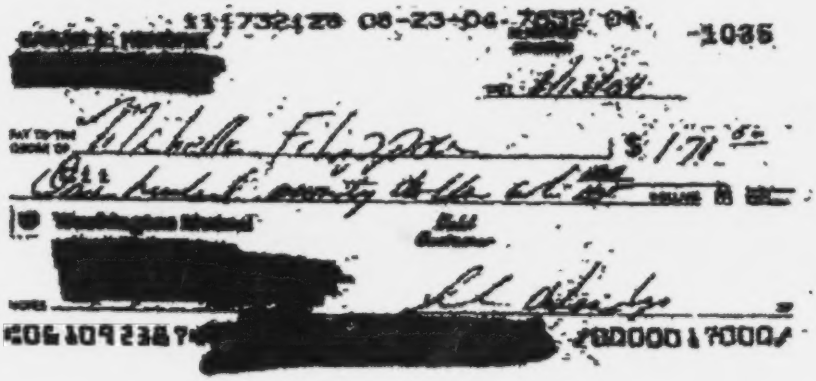
As is evidenced by the attached cancelled check, Ms. Hendrix paid me for my service. If necessary, i will testify to these facts in a court of law.

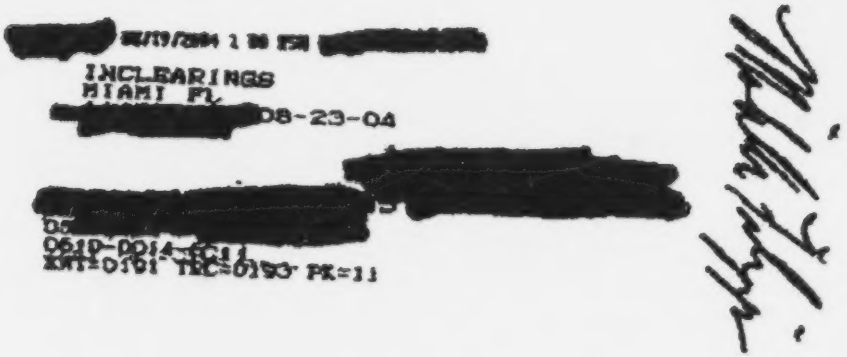
Michelle Filippou
October 13, 2004

Notary signature of Michelle Filippou
by [signature] 10/13/04

ANA M. PERRY
NOTARY PUBLIC, HENRY COUNTY, GEORGIA
MY COMMISSION EXPIRES NOVEMBER 1, 2005

EXHIBIT 1





BEST AVAILABLE COPY

Case 1:97-cv-03579-RWS Document 243 Filed 01/07/2005

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C.-Atlanta

OCT 21 2004

LUTHER D. THOMAS, Clerk
By: Deputy Clerk

SARAH E. HENDRIX,
Plaintiff,
CIVIL ACTION FILE
vs. No. 97-CV-3579-RWS

JOHN SNOW, Secretary of the
Department of the Treasury of
the United States of America,
UNITED STATES OF AMERICA,
RICHARD BYRD, MICHAEL MCBRIDE,
JOHN BUTKOVICH, WANDA EDMUNDSON,
TY AYRES, and WILLIAM ZACHERY
Defendants.

CERTIFICATE OF SERVICE

Pursuant to F.R.P.C. Rule 5, I hereby certify that I have served a copy of the within and foregoing, Affidavit of Michelle Filippou upon the Defendants in the case by placing a copy of same in a properly addressed envelope with adequate postage affixed thereon to insure delivery and depositing the same in the United States mail, addressed as follows:

R. David Powell, Esquire
Assistant US Attorney, Northern District
600 Richard Russell Building
75 Spring Street, SW
Atlanta, GA 30303

This 21st day of October, 2004

Michelle Filippou
Process Server

G-18

Case 1:97-cv-03579-RWS Document 243 Filed 01/07/2005

AFFIDAVIT OF SARAH HENDRIX

STATE OF GEORGIA
DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
CASE # 97 cv 3579

I, Sarah Hendrix, under penalties of penury, make the following statement, understanding that it may and shall be used in the above captioned case.

On August 13, 2004, Michele Filippou served Mr. Ty Ayres on the 31st floor of the Summit building, Atlanta, GA. On that same day, Ms. Filippou also served Ms. Wanda Edmundson on the 15th floor of the same building.

In order to identify the individuals, I accompanied Ms. Filippou to the Summit building that day. However, Ms. Filippou is the individual who actually handed the packages to both Mr. Ayres and Ms. Edmundson. I did not hand the packages to either individual.

After serving the individually named defendants on two different occasions, I was well aware that an independent third party must effectuate service of process. That is why I employed Ms. Filippou.

I paid Michelle Filippou for her service. If necessary, I will testify to these facts in a court of law.

Sarah Hendrix
December 20, 2004

LATRUMAH CHARDIAH
NOTARY

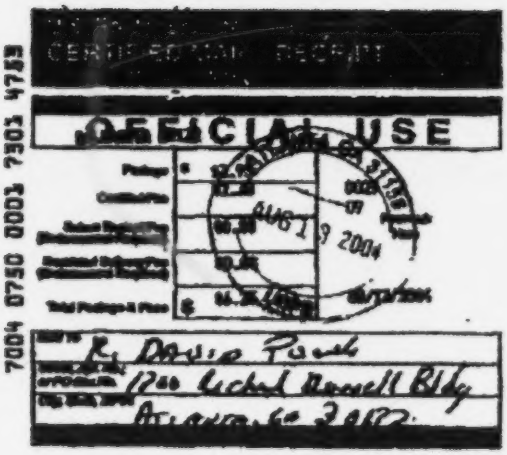


EXHIBIT 2

AO 440 (Rev. 10/93) Summons in a Civil Action ORIGINAL

UNITED STATES DISTRICT COURT

NORTHERN District of GEORGIA

SARAH E. HENDRIX

V.

SUMMONS IN A CIVIL CASE

JOHN SNOW, SECRETARY OF THE TREASURY DEPARTMENT OF THE TREASURY, ET AL DEFENDANTS

CASE NUMBER: 97-CV-3579-RWS

TO: (Name and address of Defendant)

R. DAVID POWELL
US ATTORNEY FOR THE NORTHERN DISTRICT
1800 RICHARD RUSSELL BUILDING
75 SPRING STREET SW
ATLANTA, GA 30335

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

W. DARRIN KEATON
27 COURTHOUSE SQUARE
DALLAS, GA 30132

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

LUTHER D. THOMAS

CLERK

AUG 12 2004

DATE

(BY) DEPUTY CLERK

your department that - - - such as, for example - - I hope I 'm being correct - - like a postal inspector type thing where yon could actually prosecute individuals?

A. Yes. My office has the ability to make a referral to the U.S. Attorney's Office for violation of federal crimes and with proper authority make them far all the state prosecutors for prosecution of state crimes.

Q. And with those referrals, would that include employees and taxpayers, citizens?

A. That's correct.

Q. So in your line of work, you could be at any point - - any one time investigating a particular taxpayer or investigating a particular employee of the Treasury Department?

A. That's correct, as long as it involves tax administration.

Q. Okay. Now, in your current position, is that a part of the - - and I think it's called the XD Program, executive development program?

A. No.

Q. It's not a part - - - -

A. No.

EXHIBIT 3

Q. of the executive development program? Okay. Now, when you first started with the IRS - - and I will assume approximately in 1979.

A. That's correct.

Q. Where were you stationed?

A. In San Francisco California.

Q. And haw long did you stay in San Francisco?

A. It was about seven and a half to eight years.

Q. And at some point in time, did you get transferred or move to the Atlanta area?

A. Yes, I did. I had an intervening stop along the way, but yes.

Q. And for the purposes of this deposition, I'll be referring to a relevant time period. And that time period will involve the plaintiff's time period of when she was employed in the Atlanta District of the Internal Revenue Service, approximately the beginning of 1994 until 1998. For that relevant time period, were you stationed or was your office here in - - or, in the Atlanta area?

A. It was.

Q. And what was your position for that period of time, 1999 to 1998?
A. At the time, my position title was supervisor in charge.
Q. And that was of the inspection division of the southeast region; correct?
A. Yeah. It would be the southeast region inspection service, internal security division.
Q. Did you have a short name for it?
A. Well, typically we would call ourselves internal security.
Q. Okay. All right. I'll use internal security just for the sake of brevity.
A. All right.
Q. Now, we have previously spoken with Mr. Richard Byrd. Do you recall Mr. Richard Byrd?
A. I do.
Q. And at that relevant time period, '94 to '98, what was Richard Byrd's status?
A. He was the regional inspector for the southeast region for the inspection service.
Q. And in the - - I guess the management pyramid, where did you fall in line with Mr.

Byrd?

A. There was two levels of supervision between me and him. So he - - I guess he would have been my third-level supervisor.

Q. And underneath you, how many - - how was it structured underneath you as supervisor in charge?

A. I supervised during that period anywhere between six to ten inspectors, criminal investigators, and I had office support, like a secretary I guess would be the best way to say it.

Q. Now, how many supervisors in charge were there during that time period, if you recall?

A. Well, without being precise it was six to seven, in that range. I could count them up if you wanted to give me the time.

Q. That's fine. Is it safe to say that the supervisors in charge were all on the same, I guess, management level?

A. That's correct.

Q. They each had two management levels between them and Mr. Richard Byrd: correct?

A. That's correct.

BEST AVAILABLE COPY

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 19848
Washington, D.C. 20036

Mar 17, 1997

Sarah S Hendrix
3655 Habersham Rd NE
#244
Atlanta, GA 30305

Docket#: 01973280 Recd Date: 031397
Agency #1 : 962290MT
Agency #2:
Agency #3:

Dear Ms. Hendrix

This acknowledges receipt of your appeal. Any statement in support of the appeal must be received with this office AND WITH THE AGENCY within thirty (30) calendar days of filing the appeal. It is your responsibility to ensure that THE AGENCY RECEIVES A COPY OF ANY OTHER MATERIAL YOU SUBMIT TO THIS OFFICE. Failure to timely provide such copies to the agency may result in those documents not being considered by the Commission. Please include the above docket number in all submissions and inquiries to this office.

The Commission will decline any request for an extension of time for the submission of additional statements unless the request is timely made in writing. Extenuating circumstances must be shown to justify granting an extension. Submission of a request does not automatically extend the time limit. Requests far an extension of time are to be submitted to Mr. Don Names at the above address. Material submitted beyond the time limit will be returned to you and will not be considered in our decision.

You will be notified by certified mail as soon as a decision is reached on your appeal. You are responsible for providing the

Commission with notice of any change of address. Failure to do so may result in the dismissal of your appeal. The Commission will also terminate the processing of your appeal if you file a civil action, in accordance with 29 CFR 1614.410.

The Commission's appeallate regulations are found in Title 29, CODE OF FEDERAL REGULATIONS, PART 1614. You are urged to review these regulations.

Sincerely,

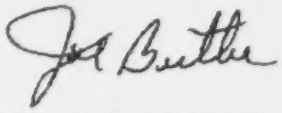
William J. Bartlett
Director
Compliance and Control Division

Case 1:97-cv-03579-RWS Document 243 Filed 01/07/2005

NATIONAL TREASURY EMPLOYEES UNION
CHAPTER 26
401 West Peachtree Street, Sui te 1260
Atlanta, GA 30365

Date: November 4, 1997

To: To Whom It May Concern



From: Joe Butler, Steward
TEU Chapter 26

Subject: Sarah Hendrix

NTEU Chapter 26 has never filed a grievance and/or complaint alleging illegal discrimination based on race, color, religion, sex, or national origin. Nor has NTEU filed a complaint for Sarah relating to sexual harassment.

If you have any questions or concerns, please call me at 331-3921.

EXHIBIT 5

Case 1:97-cv-03579-RWS Document 243 Filed 01/07/2005

Internal Revenge Service

MEMORANDUM

date: October 2, 1997

to: Ms. Eva Kinnebrew
Regional Complaint Center
800 K Street Suite # 640
Washington, DC 20401

from: Sarah Hendrix
Revenue Agent
(770) 933-2238 (w)
(770) 933-2270 (fax)
(404) 233-1401 (messages)

subject: EEOC Camplaint # TD - 971372

Per our conversation, I am withdrawing the proposed termination issue of complaint # TD - 971372. I received my 60-day "opportunity letter" on July 10, 1997 but I have not received a termination notice as of this date.

Since I want complaint # TD - 971372 to proceed expeditiously, I am withdrawing the proposed termination notice issue with the understanding that I may reinstate that issue through another complaint if a termination notice is issued to me.

Thank you for your help.

EXHIBIT 6

H

Case 1:97-cv-03579-RWS Document 253 Filed 02/23/2005

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ORIGINAL

FILED IN CLERK'S OFFICE
U.S.D.C Atlanta

FEB 23 2005

LUTHER D. THOMAS, Clerk
By: Deputy Clerk

SARAH HENDRIX,

Plaintiff,

vs

JOHN SNOW, Secretary of the Department of the Treasury of the United States of America, RICHARD BYRD, MICHAEL MCBRIDE, JOHN BUTKOVICH, WANDA EDMUNDSON, TY AYERS, and WILLIAM ZACHERY

Case No 1-97-CV-3579-RWS

Defendants

PLAINTIFF'S AFFIDAVIT PROVIDING ADDITIONAL INFORMATION FOR THE RECORD

COMES NOW Plaintiff Sarah E. Hendrix (Ms. Hendrix"), and files this PLAINTIFF'S AFFIDAVIT PROVIDING ADDITIONAL INFORMATION FOR THE RECORD and further shows the Court the following:

I, Sarah Hendrix, under penalties of perjury, provide the following information, understanding that it may and shall be used in the above captioned case.

I am providing the attached correspondance in order to

clarify the events surrounding the filing of the Plaintiff's Response to Defendant's Motion to Strike [Exhibit 1].

Respectfully submitted this 23rd day of February 2005.

NOTARY
RAJKUMAR CHAROTARI

Sarah Hendrix
Plaintiff

Case 1:97-cv-03579-RWS Document 253 Filed 02/23/2005

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SARAH HENDRIX,
Plaintiff,
v.

JOHN SNOW, SECRETARY OF THE DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, RICHARD BYRD, MICHAEL MCBRIDE, JOHN BUTKOVICH, WANDA EDMUNDSON, TY AYERS, and WILLIAM ZACHERY
Defendants

Case No 1-97-CV-3579-RWS

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. Rule 5., I hearby certify that I have served a copy of the within and foregoing. **PLAINTIFF'S AFFIDAVIT PROVIDING ADDITIONAL INFORMATION FOR THE RECORD** upon the Defendants in the case by placing a copy of the same in a properly addressed envelope with adequate postage affixed thereon to insure delivery and depositing the same in the United States mail addressed as follows:

R David Powell
Assistant US Attorney for Northern District
1800 Richard Russell Building
75 Spring Street
Atlanta, GA 30335

This 23rd day of February, 2005

Sarah Hendrix
Plaintiff

Case 1:97-cv-03579-RWS Document 253 Filed 02/23/2005

Mr. W. Darrin Keaton
27 Courthouse Square
Dallas, GA 30132
February 19, 2005

Re: Case #: 1-97-cv-3579
United States District Court
Northern District
Atlanta Division

Dear Darrin:

It has taken me almost a week to absorb the implications of your actions last Monday. To say that I am sick at heart would be a vast understatement.

1) (A) The filing of the Response to the Motion to Strike – First of all we agreed during a conversation on the morning of the hearing that I would file the Response to the Motion to Strike if Judge Story did not address the matter during the hearing. By chance, I have a recording of our conversation if you would like to refresh your memory.

Judge Story did NOT address the Motion to Strike during the hearing. All he stated was that he would determine when AUSA Powell had to file a response to the Summary Judgements filed after he considered the "scope of employment" issue.

Judge Story did NOT say that the Motion to Strike would be disregarded by the Court. Therefore, in order to protect my case it was necessary that a Response to the Motion to Strike be filed.

I never understood why you did not want to file the Response to the Motion to Strike when I had prepared it to be filed some 8 days before the hearing. Your statement that you did not want to burden the Court with extra filings does not make sense.

AUSA Powell is the one who made the initial filing and burdening the Court. Our Response to AUSA Powell's Motion to Strike was legitimate, was necessary in order to protect my

interests in the case and did not "burden" the Court. It was our obligation to file a Response or we would be conceding the Motion to Strike to AUSA Powell. Your job as my attorney is to protect my interests not put the Court's interests before my own.

I do not know what matters were discussed by you, Judge Story and AUSA Powell behind closed doors for some 15 minutes before the hearing started last Tuesday. There is no Court record of that discussion.

In fact, I do not understand why the three of you had to meet before the hearing started at all. What was discussed that could not be discussed during an open hearing?

I do know that Judge Story certainly did not mention that the Motion to Strike would be disregarded during the open hearing. Therefore, in order to protect my case, I knew that the Response had to be filed.

I left messages for you to call me at your office and on your cell phone last Wednesday, which was the **last day** that the Response to the Motion to Strike could be filed. When you did not return my calls, I signed the Response "for Darrin Keaton" and filed it with the Court. I thought that was the correct way to file it since others in the US Attorney's office had signed that way for AUSA Powell when he was sick and they filed pleadings for him.

There was no fraud on the Court. You stated in your February 14, 2005 letter that this was an "unnecessary response." I do not agree with your characterization. With nothing on the record showing that we objected to AUSA Powell's Motion to Strike, his Motion to Strike would have prevailed if I did not file the Response.

If AUSA Powell had prevailed and all of the depositions and my affidavit had been thrown out, then what would my recourse be; sue for you for malpractice?

All I need at this point in my life is another lawsuit. Meanwhile my case against the IRS and the individually named Defendants would have been over. When you refused to return my calls, I had no choice but to file the Response.

B) Contacting Judge Story and AUSA Powell without first discussing the matter with me –I am your client not them. Why would you not call me before calling AUSA Powell so that we could discuss what had happened? Why have you not called me at all since you contacted them?

Your unwillingness to return phone calls has been a continuing problem in this case and has led to much stress on me. I am not talking about daily phone calls. I am talking about you notifying me when hearing dates have been changed. I am talking about your returning phone calls when I have legal questions that need to be answered so that I can finish composing the pleadings that we have filed.

While I was composing the Responses to the 3 different Summary Judgements (USA, Mr. Snow and the Individually Named Defendants), you only spoke to me once for 3 minutes. My questions sent to you via e-mail also went unanswered.

I was initially sympathetic to you because you are being paid on contingency. Thereofre, I did not mind doing the research, writing the pleadings for your review and driving downtown to file each pleading to assure that they were timely filed.

However, there has to be some communication between a client and her lawyer or there is bound to be missteps like what happened with the filing of the Response to the Motion to Strike.

C) Apologizing to the Court on my behalf – I do not need you to apologize to Judge Story's staff, the docket clerk, and/or the filing clerk for me regarding my behavior as you stated in your letter. I was not rude to any of those individuals.

I would not have contacted any of them if you had been doing your job and were communicating with me. I never contacted any of those people when either Mr. Segerblom or Mr. Rose was representing me. I only contacted the Court since you have been my lawyer when I needed to know what was going on in my case and you would not return my phone calls.

You, not I, have put yourself in an embarassing light with the Court. Maybe you need to apologize to the Court for not keeping me informed and thus forcing me to contact the Court when I needed to knowwhat was happening in my case.

D) What did you discuss with the Judge and AUSA Powell that would make you think that the Judge would "grant the defendants summary judgement on all counts and this case would be over?"

It is unbelievable that Judge Story would make such a determination based on my filing that even you call an "unnecessary response." If he does, I can **guarantee you** two things will happen:

(1) His decision will be appealed. Your statement that "nobody will take this on appeal without a substantial amount of monies guaranteeing their attorney's fees," is not true.

(2) Some attorney(s) will pay for not representing my best interests during the 8 years of litigating this case.

2 A) The "scope of employment" issue – I was not impressed with the little bit of research that you gave me that you did sometime during the morning before the hearing (remember Lexis prints out the date that you generate the research (2/08/05) on their printouts).

My more extensive research found that, as I have always stated, it has NOT been held by the Georgia courts that an act for which an employee can be fired, is within the "scope of their employment" and that their "master" becomes the Defendant under *respondeat superior*.

"In an action in which an employee filed suit against an employer and a supervisor, alleging a claim of sexual harassment in violation of Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq., the court found that the employee's supervisor did NOT commit those torts in the prosecution and within the scope of the corporate defendant's business because they involved sexual misconduct and, thus, the employee could NOT succeed aganist the corporate defendants based on *respondeat superior*." Mangrum v. Republic Indus., 260 F. Supp. 2d 1229 (N.D. Ga. 2003).

"The true test as to the scope of employment is whether *the purpose of the fellow servant in performing the act is to further his master's business*, rather than whether or not it deviated in some degree from his normal conduct." Atlanta Coast Line RR v. Heyward, 82 Ga. App. 337, 60 S.E. 2d 641 (1950). "The patient could not show one requirement for finding the hospital liable, namely that the employee's personal act did anything *to further the hospital's business*." Piedmont Hosp., Inc. v. Palladino, 276 Ga. 612, 580 S.E. 2d 215 (2003). "The mere fact that an tort occurs during a time of obstensible employment is NOT dispositive of the question of scope of employment." Southern Bell Tel. & Tel. Co. v. Sharara, 167 Ga. App. 665, 307 S.E. 2d 129 (1983). "In order to sustain the master's liability it must appear that the tort was committed within the scope of the *master's business*. If Tort of employee is personal to himself, it is NOT within the scope of his employment." Community Theatres Co. v. Bentley, 88 GA. App. 303, 76 S.E. 2d 632 (1953).

B) Also, unless you, AUSA Powell and Judge Story made some kind of deal without my knowledge, the issue should NOT have been determined by Judge Story –

"Whether the agent was acting within the scope of his employment when he committed a tortuous act is a question of fact for the jury." Personal Fin. Co. v. Whiting, 48 Ga. App. 154, 172 S.E. 111 (1933); Digsby v. Carroll Banking Co., 76 Ga. App. 656, 47 S.E. 2d203 (1948). "Whether servant acted within Scope of Employment is Jury question." "The question of whether a servant by whose act another is injured was acting within the scope of his employment is determined by a jury." Century Bldg. Co. v. Lewkowitz, 1 Ga. App. 636, 57 S.E. 1036 (1907); Friedman v. Martin, 43 Ga. App. 677, 160 S.E. 126 (1931). "The question of whether or not the servant at the time of the injury to another was acting in the prosecution of his master's business and in the scope of his employment is a determination for the jury." Jump v. Anderson, 58 Ga. App. 126, 197 S.E. 2d 644 (1938). "Where there is a deviation the question should be submitted to the jury as to whether or not the deviation from the master's business was so slight as to not affect the master's responsibility for the negligent act." Cooley v. Tate, 87 Ga. App. 1, 73 S.E. 2d 72 (1952).

C) Since you refused to file the information from which we would have prevailed on the "scope of employment" issue as I requested, I filed it myself as an Affidavit. I do not understand your refusal to file the information that would have supported our position.

I provided the same information for you to present during the hearing but for some reason you did not. Now I am faced with the possibility of appealing Judge Story's decision if he somehow determines that employees who commit acts that can get them terminated are committing such acts within the "scope of their employment."

There are specific acts that the individually named Defendants committed that would get them terminated. Every United States Senator's office that I have contacted this last week have agreed with my analysis that government employees are NOT

acting within the "scope of their employment" when they commit acts for which they can be terminated.

I do not know what special powers you have that you determined that you agreed with a decision that Judge Story has not made and, thus, you decided to not file any additional information even though Judge Story allowed us that opportunity.

3) I hope that your lack of attention to this case has nothing to do with the IRS problems that you told me that you have experienced in the last year. For your own sake, I hope that this is not true. If true, your actions will be found out as Mr. Segerblom's were.

Darrin, as Mr. Segerblom learned, you will pay a price if you get in bed with the devil. I thought you were smater than that and had more integrity than my previous lawyers.

4) I have not decided to "go this alone." I know how this Court treats *pro se* parties. You just need to start doing your job, which is protecting my best interests, not the Court's interests, not AUSA Powell's interests, and not your personal interests.

Sincerely,

Sarah Hendrix

I

AFFIDAVIT OF SARAH HENDRIX

STATE OF GEORGIA
DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
CASE # 97:cv: 3579

I, Sarah Hendrix, under penalties of perjury, make the following statement, understanding that it may and shall be used in the above captioned case.

It has taken me a long time to understand how I went from being fully successful as an International Examiner in the Manhattan District of the IRS [Exhibit P1] to being terminated from the Georgia District of the IRS some six years later. Because there was so much behind the scenes activity, I was not always aware of the particular actions of the individually named Defendants until months and sometimes years after they occurred.

For instance, although I eventually found out that the black male (Mr. Brian Word) who was selected for the International Examiner position was not qualified for the position, it was not until the most recent discovery period that I learned that Mr. Word was placed in the position on November 13,1994 [Exhibit P2], over one (1) month before the position was officially announced *for competition on December 27, 1994* [Exhibit P3].

Mr. Word thus occupied the International Examiner position for over five (5) months before the supposedly competitive ranking results for that same position were announced on April 26, 1995 [Exhibit P4].

I will probably never know of all the personally and professionally damaging actions that the individually named Defendants took against me either in their initial quest to fill the International Examiner position with their pre-selected black candidate, Mr. Word, or later to in their conspiracy

to terminate me after I had found out about their illegal activities. Therefore, the following information is provided in the chronological order that I have since learned that it occurred not in the order of when I specifically learned of it.

I was hired on July 1, 1991 by the Manhattan District of the IRS as a Revenue Agent (Series # 512) at the GS-11/1 level. The GS-11 entry grade level was based on both my previous work experience and my CPA certification [Exhibit P5].

Revenue Agents at the IRS are given four (4) Phases of training – commonly referred to as Phase 1, Phase 2, Phase 3 and Phase 4. An International Examiner is also given another two (2) Phases of training that last approximately six (6) weeks for each phase.

While in the Manhattan District, I completed Phase 1 through Phase 4 as well as both IRS International Examiner Phases of training. In order to fine tune my International tax skills, I also personally paid to take two International tax courses at Pace University in NYC [Exhibit P6].

During Phase 2 training, I was approached by a manager of an International Branch, Mr. Alan Dixon, who asked if I was interested in becoming an International Examiner. He stated that based on my performance during Phase 1 and Phase 2 training and my prior international tax experience at CitiBank, he thought that the International Examiner position would be a good fit for me. I immediately said yes. In November 1991, some 6 months after joining the IRS, I and four (4) other newly hired Revenue Agents were transferred to International Branches of the IRS in the Manhattan District.

The International Examiner position, like a Revenue Agent position, is considered a Series # 512 position. While I was an International Examiner in the Manhattan District, I received promotions to the GS 12 and GS 13 level of pay [Exhibit P7]. I was a GS 13/1 when I transferred to

the Atlanta District of the IRS (The Atlanta District was subsequently renamed the Georgia District).

In November of 1993 while visiting Atlanta, I met with Mr. Ed Watts, about a hardship transfer to the Atlanta District from the Manhattan District. At that time Mr. Watts was the Branch Chief of Large Case in the Atlanta District. The organization of the Examination Division of the Atlanta District was different than the Manhattan District. While the Manhattan District had separate international tax branches the International Examiners in the Atlanta District were part of Large Case and reported to Mr. Watts.

Mr. Watts said that there was an International Examiner 'staff year' available in the Atlanta District. However, he stated that there was not enough actual work to support the position at that time. Mr. Watts then said he expected that the international tax work would be forthcoming within six (6) months of my transfer. He stated that because of my credentials, the fact that I had held the International Examiner position in the Manhattan District, that I had good evaluations from the Manhattan District but most of all because of the money they would save not having to train someone, that I was a good fit for the position.

On November 18, 1993, I made a formal request for a hardship transfer from the Manhattan District to the Atlanta District based on my impending marriage to an Atlanta resident. On 12/22/93, my hardship transfer was approved by the Assistant District Director of the Manhattan District Ms. Francine Crowley and by the Regional Commissioner of the Northeast Region of the IRS [Exhibit P8].

Once a hardship transfer is approved by the 'giving district' (in my case the Manhattan District) the 'receiving district' (Atlanta) must accept the hardship transferor if there was a job open in that particular job series. In my case, the International Examiner position is a part of job series # 512, which is also the same series as a Revenue Agent position.

In December of 1993, I faxed Mr. Watts a copy of the hardship transfer paperwork [Exhibit P9]. When I subsequently spoke to Mr. Watts on the phone he told me to speak with William Zachary, Assistant Chief of the Examination Division when I arrived.

Once my hardship transfer was approved, the Manhattan District Chief of Examination told me that my reporting date to the Atlanta District was January 2, 1994. I closed my cases in Manhattan and turned in my credentials and computer to the Manhattan District.

After I arrived in Atlanta what I later called 'a continuing series of unexplained inconsistencies' became a part of my daily life. After I left a message on Mr. Zachery's voice mail at his office, I was contacted by phone at home by Mr. Mike McBride who told me to report to the personnel office at the IRS's offices located in the Summit Building on the 24th of January not on January 2 as I had previously been told.

Because I had already moved to Atlanta at that date, I was given the choice of either going back to New York to work in the interim or take leave without pay. I took leave without pay for the three weeks.

Mr. McBride, according to his own testimony states to the interviewer Insp. J. Jackaway "McBride said that Hendrix requested a hardship transfer to Atlanta because she said that she was engaged to a man who lived in Atlanta. Her transferred was denied, so she took a leave of absence from her job and came to Atlanta anyway." [Exhibit P10, October 23, 1996 Mr. McBride's Inspection Service Memorandum of Interview or Activity].

This is exactly what I mean about the individually named Defendants. Mr. McBride chose to lie to Internal Inspection about a matter that is easily proven on paper. My hardship was approved. I have the transfer papers [Exhibit P11]. However his statement that "she took a leave of

absence from her job and came to Atlanta anyway" makes me wonder.

Maybe my Mr. McBride imposed 'leave of absence' that he discusses in his interview with Internal Inspection was actually the three weeks of leave without pay that I was forced to take after I moved to Atlanta.

After I completed my paperwork in personnel on January 24, 2004, I was told that the District Director, Ed Goss, had requested to meet with me that day. During our meeting, Mr. Goss told me essentially the same thing that Mr. Watts had previously told me – that the district was glad to have me, that there was a International Examiner position available in the Atlanta District, that the district did not have the work to support the position at that time, and that I should "hang in there" and the International Examiner position would become available to me as soon as the work load warranted it. Mr. Goss also told me to report to Ms. Wanda Edmundson who would be my group manager at the Marietta post of duty (POD) in the interim.

On January 25th, 1994, I attended a training class at the Koger Center along with the rest of Ms. Edmundson's group. Mr. William Zachary the Assistant Chief of the Examination Division also attended the training session. After I introduced myself to Mr. Zachary, he repeated what Mr. Goss had told me the previous day – that he was glad that I was there and that there would be an International Examiner position available for her soon.

Mr. Zachary also stated that there was already a vacant Financial Products Examiner position (GS 13) that would be announced soon and that I would be put in either my previous international examiner position or the financial products examiner position. The financial products position was announced in May of 1994.

On approximately the third day that I was in the Atlanta District, Ms. Edmundson called me into her office

to ask me about my work experience and about my personal life. At Ms. Edmundson's prompting, I told her that I had been unemployed for nine (9) months prior to be hired by the IRS. I foolishly confided in Ms. Edmundson how grateful I was to be employed by the IRS after being at the edge of financial ruin. I also told Ms. Edmundson what Mr. Watts and Mr. Zachary had said about the International Examiner and/or Financial Products Examiner positions,

Sometime during my first month in the Atlanta District, Ms. Edmundson took me through a very strange tap dance. According to Ms. Edmundson, I had been paid twice for that particular pay period; once by the Manhattan District and once by the Atlanta District. I never understood how or why she had that information before I did.

Ms. Edmundson told me that I had to go downtown to get the extra paycheck from the Manhattan District. When I went downtown, I was paid in cash for that check. Then I had to sign an agreement to pay back the money over a certain period of time. Although I thought the whole process was very weird at the time I did not think it was wise to question my manager my first month in the District. I just chalked up Ms. Edmundson's manipulation of my finances as another one of a "continuing series of inconsistencies that had become a part of my daily life" since I had transferred to the Atlanta District.

It has since occurred to me that by signing the loan agreement, the named Defendants now had the right to pull up my credit report. Which is exactly what someone did Approximately seven days after my January 26, 1994 conversation with Ms. Edmundson, someone from the Exam Division approached Internal Inspection requesting that I be investigated for personal credit problems [Exhibit P12].

Once an employee has passed their one-year probationary period and background check, it is historically unheard of for the IRS to perform such credit checks on

its employees. I learned *after* I moved to Atlanta that the transferring employee **may** have to take a "voluntary down grade" in the event that the exact position occupied in the 'giving district' is not available in the 'receiving district'. However, the usual practice of the IRS is to give the transferring employee salary retention for a two-year period from the date of the transfer even if they must voluntarily downgrade their position. This allows the transferring employee two years to compete for a position at the former higher-grade level without suffering any personal economic harm. The giving district continues to pay the salary of the hardship transfer employee to the receiving district during that time period.

I learned when I received my first paycheck that the Atlanta District had NOT retained my previous GS 13/1 salary. I was instead to be paid at the GS 11/10 salary level. This amounted to a difference of $6,350 per year [Exhibit P13].

I have since learned that although the Atlanta District did not pay me for a GS 13/1 salary, they did receive the GS 13/1 salary from the Manhattan District.

Thus, the Atlanta District used the difference between my previous GS-13/1 salary and the GS 11/10 salary (around $ 6,250 per year) not to pay me but for it's own purposes.

Maybe Mr. Zachery can explain at trial what he did with the excess money. After all, the money did flow through his office. Mr. Zachery stated in his deposition "I had primary responsibility on a day to day basis of operating issues, including the budget" and "there was very little need for my involvement (in hardship transfers) beyond budget, budgetary reasons" [Exhibit P14, 10/27/2004 Zachery Deposition, Pages 21 & 22].

Further, as part of the hardship transfer procedure, the transferring employee is given special consideration when competing for any vacant position that they previously held.

It is in the best interest of the IRS for them to do so. Why should the Atlanta District of the IRS pay to train a new person in international tax?

Because of the rules of the normal ranking procedure and the employee's previous experience in the job, the transferring employee would normally be ranked first on the Best Qualified list (BQ List) when competing for a position that she had previously held unless another candidate had similar previous experience. *The only exception to a transferee not being placed in such a vacant position was if there was an ethical or moral problem with the employee.*

From February through April 15, 2000 I worked for Tax Payers Services (TPS) at the Summit Building for Mr. Lonny Smith. Mr. Smith wrote a letter to Wanda Edmundson on June 7th, 1994 thanking her for assigning me to him and commending my job performance [Exhibit P15].

That was the last of the good news for me in the Atlanta District. It was also the last letter of recommendation that I received in the Atlanta District until the September 1997 letter I received only days before I was put on administrative leave due to supposedly poor performance.

In late February or early March, Internal Inspection of the IRS contacted me to request that I come to their offices because the Manhattan District Internal Inspection had not completed my "probationary period" background investigation and the Atlanta District needed to ask me a few questions.

I later learned that this was a lie. In fact, Manhattan District Internal Inspection completed my probationary period background investigation in 1992 while I was still in the Manhattan District of the IRS [Exhibit P16].

Not realizing that I was being deceived, I met with Ms. Denise Stone of Inspection. Mr. Joe Butler, National Treasury Employees Union (NTEU) president was also in attendance since I was an NTEU member. I was completely

candid with Ms. Stone about my previous credit problems. She concluded in a memo dated April 13th 1994 that I had not made any false statements when completing either Form # SF 171 or Form # SF 85P [Exhibit P17].

Form # SF171 is the form used every time that an employee applies for a position at the IRS. Form # SF 85P is a security clearance form with a statement 'that the signer has not defaulted on any loan in the last 180 days'. I was not in default of any loans in 1991 when I initially completed both forms or again in 1992 when I again completed both forms after the personnel department of the Manhattan District lost the personnel records of all Revenue Agents who entered the service on the same day that I did. I was not in default at that time either.

Ms. Stone was subsequently ordered to reinvestigate my credit problems [Exhibit 16]. In a memo also dated April 13, 1994 Ms. Stone came to the same conclusion that she had previously [Exhibit P18].

On April 11, 1994 despite Ms. Stone's conclusion and without informing me as is required by the NTEU agreement, Mr. Ted Stewart of Internal Inspection contacted United States Attorney Richard M. Langway **to see if I could be criminally prosecuted for "lying on Form # 171."** The US Attorney "declined to prosecute in favor of appropriate administrative action." [Exhibit P19].

I was never informed at the time that I was under any criminal investigation as is required by the NTEU agreement. I only found out about this incident in 1996 after I received paperwork through the FOIA in 1996. If I had been found guilty of lying on either Form # SF 171 or Form # SF 85P, I could have been terminated. It is my belief that the management of the IRS decided to tar my professional reputation by creating ethical issues that would impact my ability to compete for any announced Grade 13 positions instead.

In June of 1994, out of the blue, Ms. Edmundson asked me if I was delinquent in paying my taxes. I had executed an installment payment agreement with the IRS based upon a three (3) year audit performed as part of my probationary background investigation. The audit is a normal procedure for each entering IRS employee. The audit determined that I had a deficiency of approximately $600 when the audit was performed.

I was making timely payments on the installment agreement. I wrote Ms. Edmundson a memo dated June 24, 1994 regarding the audit and deficiency [Exhibit 19]. There was nothing unusual about my situation. Many entering IRS employees upon audit sign up for installment agreements.

What was unusual was the fact that Ms. Edmundson had this information before I did. I was timely paying my installment agreement. The normal procedure in this situation if there was a problem would be to contact me not my employer, Again I chalked up her inquiry to "the continuing pattern of unexplained inconsistencies that had become a part of my daily life" since I had transferred into the Atlanta District.

On July 14, 1994 the newly installed Chief of the Examination Division, Mr. Dick Valdez, issued a letter to me which stated that the investigation of my credit problems was being closed "without action" and instructed that a copy of the letter and investigation would only be retained in my personnel file if I requested it [Exhibit P20].

By August 5, 1994, only three weeks later, Mr. Valdez's tone had changed. Now the Investigation had not been a mere finishing of my probationary background investigation – the lie that Internal Inspection had told me. According to Mr. Valdez's second letter the investigation was now a 'Character and Background' investigation. Mr. Valdez states in the letter "Future incidents of this nature may result in disciplinary action being taken against you, up to and

including removal" [Exhibit P21].

There was no bad act by me between the July 14, 1994 letter and the August 5, 1994 letter to explain the difference in language. When asked, Ms. Edmundson told me without any further explanation to throw the July 14th letter away – that the August 5th letter was the correct letter.

I now see that the August 5, 2004 Valdez letter was the third effort by management to find me guilty of ethical issues so that their unqualified Black candidate could be placed in the International Examiner position without any competition from me.

In September of 1994, without my knowledge Ms. Edmundson set up a meeting so that I "could talk to Mr. McBride about my future as an International Examiner". When informed of the meeting, I told Ms. Edmundson that I did not understand why I was speaking to Mr. McBride about the International Examiner position since Mr. McBride had not made any promises to me. However, to keep Ms. Edmundson happy, I agreed to the meeting.

It was my first experience with how unpleasant Mr. McBride could be. At the meeting Mr. McBride told me that I had been enrolled to repeat Phase 1 and Phase 2 training. I pointed out to Mr. McBride that I had already passed Phases 1-4 when I worked in the Manhattan District with scores above 94% each time [Exhibit P22]. He stated that he did not care – that I was going to Phase 1 – Phase 4 training no matter what I said.

I specifically asked Mr. McBride what happens if an International Examiner position is announced while I was in Phase 1 or Phase 2 training. Ms. Edmundson said that I "would be considered" if the position came available. Mr. McBride immediately corrected Ms. Edmundson stating, "No she won't – she is not getting ahead in line of my people."

Although I did not understand the full implication of Mr. McBride's statement at the time, it is now clear to

me that sending me back to Phase 1-4 training was just another tactic by management of the IRS so that I could not effectively compete for the International Examiner position.

On September 27, 1994 I received a workload review from Ms. Edmundson stating that I improperly left documents on a fellow Revenue Agent's desk that was located adjacent to mine. Because of this supposedly great disclosure crime, Ms. Edmundson gave me a "2" on the customer relations.

I objected to Ms. Edmundson's review because I knew that I had not left any material out. Ms. Edmundson would not change the review. I now understand this to be another tactic by management of the IRS to tar my professional reputation so that I could not effectively compete for the International Examiner position.

Phase training consisted of about 6 weeks of classroom training and then 12 weeks on the job training. Phase 1 ended around December 30, 1994. I passed Phase 1 classroom training with a grade of 100% and closed about 10 cases bringing in around $ 60,000 during the on the job training. Phase 2 training was slated to start on January 3, 1995.

The classroom training sessions took place at the Summit building. The on the job training sessions were located in a building located downtown on Marietta Street. Around December 29, 1994, a friend of mine from the Marietta POD called me to tell me that an International Examiner position had been announced.

The opening date for the International Examiner position announcement was December 27, 1994 and the closing date for the applications for the position was January 10, 1995 [Exhibit P23, (Announcement # 95B0030B)} The job description was identical to the International Examiner position that I had previously held in the Manhattan District.

I did not know at the time that management's pre-selected black candidate had already been in the position since November 13, 1994 [Exhibit P24] a month before the announcement date. It is hard to compete for a job that is filed before it is announced.

It is also noteworthy that the pre-selected black candidate, Mr. Word was recommended to the position by WZACH, which is an abbreviation for Mr. William Zachery, a named Defendant in this case and the Assistant Chief of the Examination Division at that time. Not knowing that the job was already filed, I and three other candidates applied for the International Examiner position.

Due to the timing of my hardship transfer, my prior evaluation had been conducted in the Manhattan District some 14 months before the announcement of the International Examiner position [Exhibit P25]. Since I had done so well in Phase 1 training I asked Ms. Edmundson to confer with Mike Bergman (the manager who was running the Phase 1 and Phase 2 training programs) so that I could submit a current evaluation with the International Examiner announcement application.

Knowing full well when that the closing date for the announcement was January 10, 1995, for some reason Ms. Edmundson arrived at the Summit building on January 13, 1995 with the new evaluation. The evaluation consisted of a score of 3 for each critical element [Exhibit P26].
Each critical element of a Revenue Agent's job is rated from 1 to 5. (5= outstanding, 4=exceeds fully successful, 3=fully successful, 2=minimally successful, 1= unacceptable) for each Critical Element of the position.

I protested the results of the evaluation to Ms. Edmundson since I knew that it did not reflect my work in the Atlanta District and was lower than my previous evaluation [Exhibit P27]. According to NTEU rules, a manager cannot lower an IRS employee's evaluation without

significant substantiation for the lower numbers.

However, Ms. Edmundson did not try to explain why she had lowered my evaluation with lower ratings. She just stated, " You were not going to get the position anyway. **It is a minority position."** I was so shocked by her statement that when I returned home that evening, I immediately relayed her comment to other IRS employees in both the Atlanta District and the Manhattan District when I got home that evening.

I thought that they might know of a category of jobs that were 'minority positions' and that were not subject to the competitive ranking system of the Civil Service Rules and NTEU. They did not.

I now understand that lowering my evaluation was just another tactic management of the IRS used to keep me from effectively competing for the International Examiner position. Unfortunately Foe me, it worked.

Ms. Edmundson's prophecy of a "minority position" proved to be correct. But it is not hard to be right when you already know the answer. The job was filled by a minority over a month BEFORE it was announced for competitive bidding as required by the Civil Service Rules.

On April 26, 1995, (some five (5) months after Mr. Word was placed in the position) the International Examiner position was **formally** given to Mr. Word – a black male:

1) whom is **not** a CPA as I am;
2) who did **not** have any international tax training either within the IRS or outside the IRS as I did;
3) who did **not** have any previous outside international tax experience as I did at CitiBank,
4) and who had **not** previously held the International Examiner position as I did in the Manhattan District of the IRS.

In fact, it appears that Mr. Word's only qualification for the International Examiner position was that he is a black

male [Exhibit P28]. He states in his deposition "that he has not had any previous international tax or training." I do not know how he could even be ranked in Critical Element # 4 – Tax Law Interpretation and Application of the International Examiner if he had no international tax training [Exhibit P29].

Mr. Word's lack of knowledge apparently did not hurt him. A little over a year later while still occupying the same position his salary was increased from a GS 11 to a GS –12 [Exhibit P30].

On January 23, 1995, my mother unexpectedly died the first day after she returned home from a visit to Atlanta. I was devastated by her death. I did not think any more about the International Examiner position until I received the job announcement results in April 1996..

After Phase 2 on the job training, I resumed my Revenue Agent responsibilities in Ms. Edmundson's group at the Marietta POD. Once I received the announcement that Mr. Word had been given the International Examiner position, I requested to see my ranking package for the position, which is my right under the NTEU rules. Ms. Edmundson would not give it to me.

Initially, I was told that "it could not be found", then it "was missing", then "oh, no, it's not missing – it never existed" or then, my personal favorite, "it did exist but it doesn't exist any longer but it may appear in the future".

In fact, as of this date, I still have not received the ranking package although all three of my lawyers have asked for it during the seven (7) year discovery period of this case. However, despite Ms. Edmundson's (and later Ms. Brazwell's) statements, evidently *my ranking file does exist.*

It was produced for the National Labor Relations Authority after I filed my complaint with their offices regarding the illegal use of the Alternative Ranking System. I guess that I am the only person who is not allowed to see it.

Even though I was never allowed to see my ranking package for the International Examiner (IE) position, I eventually found out how the pre-selected and unqualified Mr. Word was given the IE position. Management of the IRS incorrectly and illegally used an Alternative Ranking System to slide Mr. Word through the ranking procedure.

The Alternative Ranking System can only be used in very specific situations. "The alternative system can only be used when filling positions *ABOVE the journey level*" [Exhibit 31, National Agreement Between The Internal Revenue Service (IRS) and The National Treasury Employees Union (NTEU), NORD IV, Section 5 (k), Alternative Ranking Procedures].

The journey level of the # 512 job series, which includes both International Examiners and Revenue Agents, is a GS – 11.Thus, in order to qualify to use the Alternative Ranking System, the International Examiner job had to be announced at least at a GS –12 level The position was announced as a GS – 11.

However, the individually named Defendants were not going to allow a few Civil Service Rules stop them from putting their pre-selected unqualified black male candidate in the International Examiner position. As Ms. Edmundson used to always say "I have always found it easier to beg for forgiveness than to ask for permission."

The implications of a mature adult living by that philosophy, much less a powerful IRS examination manager with access to the American taxpayer's money causes me much concern. I wish Ms. Edmundson luck in her begging.

In order to keep up the charade that the International Examiner position was open for competition for all IRS candidates, IRS management turned to the easier to control Alternative Ranking System rather then the Normal Ranking System.

The Normal Ranking System described in the NTEU agreement states that an individual will be given a score that consists of two elements:

1) Sixty per cent (60%) of the ranking number is based on the evaluations given the individual in the performance of his job.
2) Forty percent (40%) of the ranking number is based on the POTENTIAL of the individual to perform successfully in the job (i.e. prior experience holding the position, technical knowledge, outside working experience, etc.)

The Alternative Ranking System, however, is *based entirely (100%) on the Individuals' subjective evaluations in the position that he is currently holding*.

The effect of using the Alternative Ranking System in my particular situation is that no consideration was given to my prior experience or knowledge, my prior international tax training, my CPA certification OR the fact that I had performed "above fully successful" when I previously held the International Examiner position in the Manhattan District. The ranking officer thus only considered my performance ratings in the position that I held at the time of the announcement. Ms. Edmundson guaranteed this result when she lowered my evaluations to a 3 in all the critical elements.

The conscious use of the incorrect ranking system in order to place Mr. Word, a black male, in a position that he was not qualified for, is another example of the continuing discrimination that I and others have endured while working in the Atlanta District. IRS management in the Atlanta District used subjective standards as a means of furthering the careers of candidates from favored ethnic groups at the expense of better-qualified individuals.

I have been told by that the practice continues to this day. It is my understanding that Mr. Zachery, a named

Defendant, was recently forced to resign from the IRS after it was found that he AGAIN used a similar approach to further the career of a personal friend, Ms. Beverly Tatum Gibson.

I could have never anticipated the amount of abuse that was to follow my request for the ranking package. Ms. Edmundson started a full time campaign of harassment. Ms. Edmundson intimated during a group meeting one day that she was proud of her moniker, "The Terminator."

Once I figured out what management had done, on April 15, 1996, I filed a complaint with the Federal Labor Relations Authority (# AT – CA – 60521) stating that the IRS had gone against the NTEU agreement by deliberately and incorrectly using the Alternative Ranking System to my detriment.

In the interim, the harassment by Ms. Edmundson and other members of IRS management continued. Sometime during August 1995, I was assigned to audit an individual who I have subsequently called Taxpayer # 1. I completed the audit with a signed agreement of tax owed in the amount of $ 7,362 and a prepayment of $1,000 for that tax obligation [Exhibit P32].

At that time the IRS was pushing an "economic reality" approach to tax audits. The idea behind an economic reality review was for a Revenue Agent to look at the whole financial picture of the taxpayer in order to determine if the correct income was reported on the return. Or, more simply – if the taxpayers were reporting only $ 25,000 per year in income on the return how can those same taxpayers afford the $ 400,000 house that they live in and the two Mercedes that are registered in their name at the DMV?

In order to assure that the Revenue Agents in any particular group were following the economic reality directives, I was told that a Branch Chief from a different Branch than mine would review the my group's Revenue Agents completed audits. The Economic Reality Review was

to assure that all possible taxpayer unreported income was found upon audit. In my case, the Branch Chief who was reviewing my group's audits was Mr. Paul Mayberry.

On August 21, 1995, Mr. Mayberry reviewed my completed audit of Taxpayer # 1. Mr. Mayberry concluded that I had not caught all of Taxpayer # 1's unreported income during the audit. Using indirect methods, Mr. Mayberry determined that there was between $ 61,269 and $ 86,239 of unreported income that had not been reported [Exhibit P33]. Based on Mr. Mayberry review Ms. Edmundson ordered that I reopen the audit of Taxpayer # 1.

Taxpayer # 1 was not pleased to have the audit reopened. When I arrived at the appointment he handed me an amended return for the same tax year that I was auditing where he claimed approximately $ 40,000 in additional business expenses that had not been previously considered during the audit. Thus, using Mr. Mayberry's approach, there had to be even more unreported income than calculated previously to cover those additional expenses.

Taxpayer # 1 was so upset with me during the appointment, that in desperation I called Ms. Edmundson to request a manager's conference with myself, Ms. Edmundson and Taxpayer #1 to resolve his concerns. Ms. Edmundson refused my request, told me to handle it and hung up the phone on me in mid conversation.

Sometime after our conversation she did meet alone with Taxpayer # 1 at his place of business. She came back from the meeting with a negative letter written by Taxpayer # 1 about the audit that I had performed. She told me that she was going to allow Taxpayer # 1 to receive the refund that he filed for on the amended return. When I questioned how she could do that considering Mr. Mayberry economic reality review results she told me that it was not my business what she did.

Ms. Edmundson also told me that she would finish the case. She took the file from me and put the negative letter in my personnel file. I was told that it would be a security violation if I went on the system to see the final results of Taxpayer # 1's audit. Although Taxpayer # 1 remained in my work inventory, I was not allowed to see it until six (6) months later when NTEU demanded it.

Thank God there are still some IRS employees who have integrity. An individual who never identified himself to me went on the system and printed out Taxpayer # 1 audit results and left it on my desk in a sealed pink envelope. It stated that Taxpayer # 1 ended up paying $ 812 in tax [Exhibit P34]. That is not a lot of tax for what Mr. Mayberry calculated to be between $60,000 and $ 87,000 unreported income.

Mr. Mayberry was also surprised at the results when Internal Inspection interviewed him after Congress forced the IRS to look into my charges against Ms. Edmundson. He states in the December 4, 1996 interview "he would be surprised to hear that someone reviewed Taxpayer # 1 audit and found that he owed less in taxes that (sic) Hendrix had calculated" [Exhibit P35].

Sometime during that month, I called Mr. Butler, NTEU president, to discuss the continuing problems that I was having with management of the IRS. He told me that he would discuss the situation with Ms. Edmundson and Mr. McBride and get back with me.

The following week I met with Mr. Butler one evening after work. Mr. Butler stated during that meeting that he had discussed my situation with both Ms. Edmundson and Mr. McBride. He stated that they told him that they had no intention of working out any problems that they had with me. He also told me they stated that they were going to downgrade my evaluation in the critical element of customer relations, and once they had established a pattern of lower

evaluations, they were going to issue me a 60-day letter and terminate me [Exhibit P36]. Mr. Butler later confirmed his conversation with Mr. McBride on this topic [Exhibit P37, Mr. Butler's November 13, 1998 Deposition].

Within a three and one half week period Ms. Edmundson solicited three negative letters about my job performance. I can prove on paper that each of the three taxpayers received a significant tax benefit for writing those letters.

Each of the three files were taken from me and closed by Ms. Edmundson [Exhibit P38]. On October 6, 1995 during a workload review Ms. Edmundson gave me my first rating of 2 in the Critical Element of Customer Relations. A '2' rating means that I performing at a "minimally successful" level in that Critical Element.

I began my tax audit career in 1985. In my entire career, I had never received any negative letters from taxpayers regarding my performance on an audit until I transferred to the Atlanta District. Despite that record, Ms. Edmundson was able to solicit three negative letters about me within a three (3) week period.

The more interesting point is that once Ms. Edmundson found out that I was reporting her actions to the NTEU, Internal Inspection and upper management, *the letters stopped*. During a conversation that I had with her at the time, she said, "I think we can work out our differences. If you work with me the letters will stop."

And miracle of all miracles, the letters did stop. From that point forward until I was terminated from the IRS I was never given another negative letter written by a disgruntled taxpayer.

Ms. Edmundson told Internal Inspection when interviewed that the letters stopped because I did not have any more inventory [Exhibit P39]. Of course this was not true. If I had no inventory what was I doing at work? I have

my time sheets that clearly show that I was working cases at the time that the letters stopped, The letters stopped because Ms. Edmundson stopped soliciting them.

On January 22, 1996 Ms. Edmundson evaluated me with a 2 (minimally successful) in the critical elements of customer relations and workload management as Mr. Butler had told me she would [Exhibit P40]. On January 26, 1996 Ms. Edmundson scheduled another workload review of me for February.

My friends in the group joked that Ms. Edmundson must have loved to spend time with me – that was the only explanation for all the workload reviews she was conducting of me. The normal procedure is for an individual to be reviewed once a year when the annual evaluation was done.

The subsequent harassment was much more subtle than Ms. Edmundson's previous actions. On September 26, 1995, Mr. Edmundson issued a memo stating that I could only take taxpayer files out of the office as I needed them to complete audits [Exhibit P41].

She stated to me that I must leave all taxpayer files in the office until the day of the particular taxpayer's audit. That meant that every morning I had to drive from my home in Buckhead to the Marietta POD pick up the taxpayer file, then drive to the audit site. In the evening I had to reverse the process.

Since I was a field auditor who by definition was suppose to conduct audits in the field, this restriction greatly increased my audit time on each audit. For instance, if the audit was in Carrollton, GA as many of my audits were, I had to drive from Buckhead to Marietta to pick up the taxpayer file, drive to Carrollton to perform the audit, then in the evening drive back to Marietta to drop off the file before I returned to my home in Buckhead. Depending on the audit site and the amount of traffic, Ms. Edmundson's restriction resulted in a minimum of an hour extra drive time per audit

per day.

The restriction had an added benefit in Ms. Edmundson's goal to terminate me. Because I had to charge the extra drive time to each case, she could then write me up for excessive time spent on each audit when she did my evaluation. It was a win-win situation for Ms. Edmundson and a lose-lose situation for me, The restriction also played a role in my 15 day unpaid suspension from the IRS during July 1996 that I will discuss later in this affidavit.

On October 12, 1995 my car broke down when returning to the office from an audit. Although I called Ms. Edmundson to report what had happened and my location, she decided reported my time as AWOL. Those hours were deducted from my pay for that week.

I had to grieve this ridiculous action through the NTEU grievance process. Mr. Ayers, another named Defendant, eventually determined that the time should have been recorded as administrative leave and not deducted from my pay [Exhibit P42]. Despite Mr. Ayer's determination, neither the time nor the money was ever returned to me.

When Hurricane Opel tore through Atlanta, everyone in Ms. Edmundson's group was given four (4) hours administrative leave based on an executive order by President Clinton. I was granted (1) hour. Again I had to file a grievance through NTEU to get the extra three (3) hours of leave restored [Exhibit P43]. And, again, even though I won the grievance, the time was never restored to my leave statement.

On February 1, 1996 I received a signed Revenue Agent Report (RAR) from another taxpayer. When I went to process the RAR and close the case, the Taxpayers file had been taken from my locked file cabinet. Ms. Edmundson and her secretary Ms. Rosa Wright were the only individuals who also had keys to my file cabinet.

When I reported the incident to Ms. Edmundson she

BEST AVAILABLE COPY

did not appear to be concerned about it even though losing a taxpayers original tax return is grounds for termination of an IRS employee [Exhibit P44]. I reported the lost file to Internal Inspection [Exhibit P45]. The file was eventually found in Ms. Edmundson's office during a workload review.

On February 2, 1996 I requested a meeting with the District Director Mr. Al Brooks to discuss what Ms. Edmundson was doing [Exhibit P46]. He refused to meet with me.

On February 5, 1996, Ms. Yvonne Durden (NTEU representative) with my permission requested Ms. Edmundson to produce my personnel file for our review [Exhibit P47]. We were concerned about what Ms. Edmundson had put in file that we did not know about. Ms. Edmundson never produced the file.

On February 6, 1996 I filed a grievance with NTEU regarding my annual appraisal that contained a 2 (minimally successful) in customer relations. I also requested that I be transferred to another group and that my ratings be raised to 3s as a remedy [Exhibit P48].

On February 22, 1996 I was AGAIN "randomly selected" for a third security clearance that included an audit of my current tax returns [Exhibit P49]. After I refused to cooperate the matter was dropped.

On February 23, 1996 I was notified that Phase 3 training would be from March 18 through April 5, 1996. I had previously taken Phase 3 training in the Manhattan District and scored 96% [Exhibit P50].

On February 26, 1996 during a workload review that Ms. Durden (NTEU steward) attended, Ms. Edmundson concocted a totally fabricated story about my faxing a memo to the Koger Center. If the incident were true management could have punished me for disclosure. When I proved to Ms. Edmundson that I did not possess the memo that she said I faxed, she dropped the subject [Exhibit P51].

It was also during this workload review that I supposedly threatened Ms. Edmundson's life. Neither Ms. Durden nor I heard me make any threatening comment.

On March 5, 1996 Ms. Edmundson wrote a memo to Internal Inspection reporting that I made "idle threats against her in the workplace" specifically threatening her life [Exhibit P52]. Although Internal Inspection took Ms. Edmundson's memo seriously and thoroughly investigated Ms. Edmundson's ridiculous complaint, they refused to look into the security of my file cabinet. [Exhibit P53].

On March 7 and 8, 1996 I stayed home from work because I was sick. On both days, I timely called in to work within the required two hours to report that I was ill and to request sick leave. During the morning of March 8, 1996, Ms. Edmundson called me at home and ordered me to get out of my sick bed and bring in the taxpayer cases that I had been working on. I was working on the cases on my own time in anticipation of what had become monthly workload reviews. When I told Ms. Edmundson that I was too sick to get out of bed much less drive to Marietta with the cases she hung up the phone on me.

Later that day an individual that I did not know called me from the intercom system in my apartment complex. The individual identified himself as being from Internal Inspection of the IRS. He initially stated that he wanted to come to my apartment to "just talk to me". I told him that I was too sick to entertain company. I also asked him for his phone number so that I could verify that he was from the IRS. He refused to give me his phone number.

He then stated that he was really there to pick up the taxpayer files that I had at home. When I asked him if he had written orders that stated that he could take the files he stated that he did not. I told him that I would not turn over the files without written orders. I then hung up the phone.

I was very concerned about letting someone in my apartment that I did not know. During the previous summer a woman in another building in the apartment complex had been beaten to death during the day.

I then called Internal Inspection and spoke to Mr. John Butkovich, a named defendant in this case. He identified the individual who had been at my door as an IRS employee. He also stated that there were no written orders to take the cases. I told him that unless there were written orders, I was not going to turn over the cases and face possible disciplinary actions because of disclosure of taxpayer information.

At that point Mr. Butkovich got very abusive with me and told me that I faced possible criminal action if I did NOT comply with his order. However, I knew that it is a felony to disclose taxpayer information to anyone *even employees of the IRS*.

According to IRS Document # 9950 – Reporting Misconduct – A Guide for All Employees "Disclosure of tax return or information pertinent to a tax return is a violation of law and thus subject to civil and criminal sanctions". [Exhibit P54]. If I turned over the files to a stranger without written orders, I could be prosecuted for disclosure for each case that I gave that individual.

I also knew that setting someone up for disclosure problems was a common ploy used by IRS management and Internal Inspection when they wanted to harass and/or terminate someone. According to IRS Rules of Conduct, however, I could have turned over the cases to Ms. Edmundson because she was my direct line manager if she had come to my apartment.

I later found out that Ms. Edmundson was within five (5) minutes of my apartment that day when she traveled from the Marietta POD to the Summit Building. She could have easily swung by my apartment to pick up the cases if it was so important for her to have them on a Friday afternoon.

It is my belief that the reason Ms. Edmundson chose to get Internal Inspection involved was to raise disclosure problems for me.

Phase 3 training was scheduled to begin after lunch on March 18, 1996 at the Koger Center. Ms. Edmundson told me that I could not go to Phase 3 training until Mr. McBride arrived Marietta POD. She said that he had something he wanted to discuss with me. Although I did not know it at the time, that meeting was the beginning of what I later referred to the Phase 3 Nightmare.

I called Ms. Durden of NTEU to request that she also attend the meeting with Mr. McBride so that I would have union representation at the meeting. Mr. McBride arrived around 12:50 for the meeting. Phase 3 training started at 12:30 some 10 miles away at the Koger Center. So having to attend Mr. McBride's meeting made me miss a significant portion of the first day of Phase 3 training.

Mr. McBride presented me with a letter of proposed adverse action that stated that I was to be suspended without pay for 15 days because I supposedly had 'failed to follow management directives' by refusing to give the cases to Internal Inspection and that I supposedly 'disrupted the workplace' by threatening Ms. Edmundson's life [Exhibit P55].

I was absolutely astounded by the letter. I have never threatened Ms. Edmundson's in any way – much less her life. Ms. Edmundson is at least five (5) inches taller than me and carries at least 50 more pounds on her body than I do. How was I going to kill her? I do not own a gun nor do I know how to use one.

Also violence has never been a part of my or my family's life. I was raised as a member of the Church of the Brethren, which is a descendant of the Quaker Church. The Church of the Brethren is one of the few churches whose male members may be recognized as conscientious objectors

by the U S Government. All church members are raised to reject violence in any form.

During a previous March 6, 1996 meeting Mr. McBride had shown me a memo that I had written on March 1, 1996 [Exhibit P56]. He picked out one sentence out of context from that memo that supposedly showed my evil intent. I do state in the memo "However, if I was Ms. Edmundson, I would be fearful."

However, what I actually state is "There is always the hope that Ms. Edmundson will come to the conclusion that she can not intimidate me into quitting my job – no matter what she does, I am without fear. However, if I was Ms. Edmundson, I would be fearful. She has made some major mistakes and is now trying to put her burden on me. She is wasting everyone's time with this silliness". I asked Mr. McBride during the March 6, 1996 meeting what he thought I was threatening Ms. Edmundson with – excessive silliness?

I have since found out that Ms. Edmundson and Mr. McBride solicited three statements from IRS employees that supposedly supported Ms. Edmundson statement that I had threatened her life [Exhibit P57].

One of the individuals told me that Mr. McBride threatened that he would never get his GS -13 if he did not produce the statement [Exhibit P58]. Another individual, Ms. Rosa Wright, was Ms. Edmundson's secretary at the time and was later Mr. McBride's secretary. Her disdain for me is evident in her deposition [Exhibit P59].

The third individual, Mr. Ed Ladusky, changed his statement at least once in order to accommodate Ms. Edmundson's view of the world. It is my understanding that Mr. Ladusky has provided similar documents for Ms. Edmundson when she had previously gotten in trouble using her heavy-handed tactics.

It is interesting that Ms. Edmundson claims that she

and I had a good relationship except for my 'performance issues.' She also stated that she never perceived any resentment from me. [Exhibit 60, Defendant Edmundson's October 12, 2004 Deposition]. On the one hand I was suspended for 15 days because I supposedly threatened Ms. Edmundson's life and on the other hand, Ms. Edmundson did not notice any resentment on my part.

Although the Adverse Letter that Mr. McBride brought to the meeting is dated March 18th, it was not imposed until July 15, 1996. Mr. McBride held that letter over my head for four months.

Phase 3 training was a nightmare. People in class stated to me that Ms. Edmundson must have missed me because she was at the Koger Center two or three times a week during the whole six (6) week training period. She pulled me out of the classroom for the most ridiculous matters so that I would miss the classroom instruction. It was obvious to everyone in the classroom what was going on. One classmate felt so bad for me that she wrote me a note trying to buck up my spirits [Exhibit 61].

At one point, I attempted to speak to Mr. Valdez, Chief of the Examination Division, about my situation when he visited Phase 3 training. He refused to discuss anything with me even though I had arranged to have another individual present to prevent any more accusations of death threats. He stated that "he could not get involved in the situation" even though it was his signature on the adverse letter.

By the end of Phase 5 training I was an emotional wreck. Because of the harassment and the distractions, I did not pass Phase 3 classroom training even though I had passed the exact same training with a score of 97% when I had previously taken it in the Manhattan District [Exhibit P62].

After I failed Phase 3 classroom training, I was

refused Phase 3 on the job training. Ms. Edmundson also told me at the time that there was a good possibility that I would not be allowed to repeat Phase 4 training.

I was put in a worse position than Mr. Don Dolan was placed during Phase 2 training. Mr. Dolan is a white IRS employee who was discriminated against and who was successful in his suit against the IRS. He at least got his on the job training during Phase 2 even though he had failed the Phase 2 classroom training.

As is revealed in the decision in Mr. Dolan's case, black individuals are treated very differently than white individuals in the Atlanta District. Ms. Kathy Brown (black), Mr. Marvin Burr (black), and Mr. Ron Jones (black) were given extra on the job training during Phase 2 when they did not do well during the classroom portion of that training [Exhibit P62].

Ms. Edmundson and Mr. McBride denied me Phase 3 on the job training from April 1996 until August 1996 [Exhibit P63]. Even though Ms. Edmundson's states in her October 12, 2004 Deposition that she "wanted to afford me every opportunity to succeed, she denied me on the job instruction after Phase 3 classroom training for at least ten (10) weeks [Exhibit P59, Defendant Edmundson's October 12, 2004 Deposition].

Sometime in April I received a letter dated April 18, 1996 from Employee Tax Compliance saying that the IRS wants to AGAIN look at my 89-90 taxes [Exhibit P64]. The letter states that an employee can be subject to discipline including possible removal. I refused to cooperate with the audit and the matter was dropped.

Sometime during April or May of 1996 on the advice of NTEU, I called a Ms. Colquitte, an EEO counselor who worked in the Regional Office of the EEOC. When I told her what was going on she stated that she did not think that I had an EEOC complaint but that I should be very worried about

my job. It appeared to her after only a phone conversation that I was being targeted for dismissal.

During that time, I was in contact with Senator Coverdell's office to explain Ms. Edmundson's illegal activities and ask for help [Exhibit P65]. Following my discussion with Senator Coverdell's office and after I received the FOIA information that stated that Internal Inspection had approached the US Attorney's office in an attempt to have me criminally prosecuted for lying on my Form # 171 *within 15 days of my transferring into the Atlanta District,* I filed my first EEOC complaint.

By coincidence, Mr. Word was transferred out of the International Examiner position into a Self Employment group after I filed the EEOC complaint [Exhibit P66]. Therefore, Mr. Word was in the International Examiner position from November 1994 until August 1996.

The NTEU had told me that it was too late for them to file an Unfair Labor Charge regarding the incorrect use of the Alternative Ranking System when ranking the International Examiner position but that the same time restrictions did not apply to me. I filed an unfair labor charge against the IRS with the Federal Labor Relations Authority (FLRA) on April 15, 1996.

On May 15, 1996 Mr. Ty Ayres, Assistant District Director of the Atlanta District, issued a letter to Senator Coverdell's office stating that Mr. McBride was the Chief of the Examination Division and that all information that Senator Coverdell's office received from me should be sent to Mr. McBride [Exhibit P67].

According to Mr. Nixon of Senator Coverdell's office, Mr. Butkovich, a named Defendant in this case, also gave him the same instructions regarding the information that I sent to the Senator's office. Thus, the information that I sent to Senator Coverdell's office was being directly sent to an individual who is named in my EEOC complaint. I only

found out this information much later by pure accident.

On June 7, 1996 Ms. Audrey Mahone issued a memo to Ms. Michelle Stanley-Lee requesting my ranking package for International Examiner position so that the IRS can respond to the FLRA charge [Exhibit P68]. As I stated before, as of this date, some 8 years later, I still have not seen my ranking package. But at least we know that it exists.

On May 16, 1996 I made an Oral Reply in front of Mr. Zachery, a named Defendant, protesting my 15 day unpaid suspension [Exhibit P69].

On June 10, 1996 Ms. Mahone of Labor Relations, wrote a memo to Mr. Valdez informing him of the UFLP claim [Exhibit 70]. Contrary to what the Defendant's counsel states in his Motion, Mr. Valdez as well as the District Director, Mr. Al. Brooke, were kept completely informed of the nightmare my life had become.

On June 17, 1996 I contacted Congressman Newt Gingrich's office to report Ms. Edmundson's illegal activities and solicited his Office's help. [Exhibit 71]. On June 26, 1996 someone named Mary M wrote a memo to Al Brook, District Director of the IRS, acknowledging that the wrong ranking system had been used when ranking the International Examiner position and stating that 'no harm' was done to me [Exhibit P70].

This statement is absolutely untrue. As I have previously shown, I lost at least $ 6,350 PER YEAR because of the Atlanta District's actions. On July 12, 1996 I received a semi annual Job element appraisal that evaluated my job performance with five 2s and two 1s and one 3 in the Critical Elements. Evaluations are traditionally done only once a year.

The IRS imposed the 15 day unpaid suspension during the Olympics on July 15,1996. To this day when I think of the 1996 Olympics, I remember how upset I was when they were going on.

I requested that the NTEU file a grievance regarding

the 15 day unpaid suspension but they refused [Exhibit P71]. On August 12, 1996 I received a letter from the NTEU lawyer, Mr. Timothy Walsh, that stated NTEU would not grieve my 15 day unpaid suspension [Exhibit P72]. I appealed the NTEU decision to no avail [Exhibit P73].

On August 1, 1996 I contacted Ms. Donna Spelle Flynn, Staff Director House Committee on Ways and Means to report the illegal activities that were going on at the IRS [Exhibit P74]. I also contacted other members of Congress at that time.

The information that I submitted to Congress finally forced the IRS to begin an investigation of Ms. Edmundson. The IRS had no choice when Congresswoman Nancy L. Johnson's office contacted Mr. Gary Bell, Chief Inspector of the IRS [Exhibit P75].

The IRS did not ask me for my input during in the investigation. I only saw the Investigation Report during the lengthy discovery period of this case. On August 4, 1996, my first EEOC complaint went formal (Exhibit P76, Complaint 96-2290 MT).

Ms. Edmundson and Mr. McBride only allowed me Phase 3 on the job training after I went formal with that EEOC complaint. I started Phase 3 on the job training on August 14, 1996 only 3 weeks before Phase 4 classroom training began. Despite the time lag between my Phase 3 classroom training and Phase 3 on the job training, I passed the on the job training portion of Phase 3. Thus, I received three weeks of Phase 3 on the job training while everyone else in the group had ten weeks of on the job training.

The harassment by Ms. Edmundson continued. On August 5,1996 Ms. Edmundson required me to write a memo explaining what I had done on an audit in Carrollton, GA. She did not require the same information from any other Revenue Agents in her group.

On August 19, 1996, Ms. Edmundson demanded that

I get a note from the taxpayer to prove that I was actually at the audit. The note stated that I was at the taxpayer's place of business before the taxpayer arrived [Exhibit P79].

On August 20, 1996 I received a letter from the Department of the Treasury Regional Complaint Center in Washington stating that my first EEOC complaint was being transferred to the Dallas Regional Complaint Center [Exhibit P80].

Once I filed my first EEOC complaint, management of the IRS saw the need to get Mr. Word out of the International Examiner position that he had occupied since November 1994. On 8/21/1996 Mr. McBride, a named Defendant in this case, requested that Mr. Word be prompted and transferred out of the International Examiner position. The move was effective September 15, 1996 [Exhibit P81].

The IRS tried to cover their tracks by stating that Mr. Word was only "detailed" to the International Examiner position [Exhibit 85]. However, as is evidenced by the paperwork. Mr. Word was in the position from November 1994 before the announcement of the job through September 1996. According to NTEU rules a detail is for 120 days and can be extended ONLY once for another 120 days.

On August 26, 1996, I was notified to report to Phase 4 classroom training on September 9, 1996. Phase 4 in the classroom training was to scheduled to end on September 27, 1996.

I was finally transferred out of Ms. Edmundson's group during September 1996. My new manager, Ms. Carin Baswell (her married name now is Carin Brazwell), also reported to Branch Chief, Mr. McBride. So even though I no longer reported to Ms. Edmundson, Mr. McBride was still my direct line supervisor.

The harassment continued under Ms. Baswell. In one memorable incident Ms. Baswell accused me and wrote me up for supposedly stealing a red ink pen, a pencil and

an IRS phone directory from a taxpayer's representative's office. I did not take those items. I already had all the writing instruments I needed as well as an IRS phone directory.

On September 27, 1996, I passed Phase 4 classroom training with a grade of 80%. I was assigned Ms. Dorothy Poole as my on the job instructor. It turned out that Ms. Poole had an entirely different agenda than just being my on the job instructor. During the whole Phase 4 training period, Ms. Poole would make comments to me like "your dead mother would be so ashamed of you now" and "How can you be a CPA and still be so stupid?" I did not find Ms. Poole's comments particularly helpful.

On October 10, 1996 Ms. Melissa Hardy requested the ranking package information for the International Examiner position from Mr. Finer of IRS in order to investigate my FLRA unfair labor charge [Exhibit P84]. Although they must have supplied the information to Ms. Hardy, I was still not allowed to see my own ranking package. On October 24, 1996 I again requested my ranking package form Ms. Baswell [Exhibit SH 89]. She laughed at my request and stated "I am not going to bother asking for it. They are not going to give it to you".

On October 11, 1996, I received a memo from Mr. Valdez warning me to pay any personal tax obligations that I owed or face disciplinary action. [Exhibit P85]. When I looked into the matter I found out that I owed $2.90 in tax [Exhibit P86]. I immediately paid the $ $2.90 that I owed.

On October 29, 1996 Ms. Baswell informed me that when she had arrived at work that morning, she found that my file cabinet was not locked. If any files had been taken from the file cabinet, I could have been charged with disclosure. I requested a new lock for the cabinet. I also requested that Ms. Wright (who was Mr. McBride's secretary at that time) NOT be given a key to that lock. Ms. Baswell refused my request. I purchased my own lock and put it on

the cabinet.

On November 20, 1996 during a conversation I had with her when she also derided my supposed lack of audit skills, Ms. Poole stated **"I do not want to be the one to put the final nail in your coffin but I will be if I have to."** I reported the conversation to Ms. Baswell and documented it in a memo to her. Ms. Baswell refused my request for a different on the job instructor for the rest of Phase 4 training.

Ms. Poole did her best "to put that final nail in my coffin." She did not pass me for Phase 4 on the job training.

On November 26, 1996 I received the decision by the FLRA dated October 31, 1996. I requested an extension of the normal thirty days allowed to appeal because I had not received the notification until that date. Mr. Carol Pope approved the request for the extension on December 5, 1996. I timely filed that appeal on December 25, 1996 [Exhibit P88].

On December 6, 1996 the EEOC informed me that they were dropping some of my complaints because I had not timely filed them. On December 13, 1996 I wrote to the EEOC stating that the complaints were timely filed and demonstrated "a continuing pattern of harassment, intimidation and retaliation since I transferred to the Atlanta District," Exhibit P89].

On January 2, 1997 I wrote to Senator Coverdell's office regarding Mr. Butkovich's decision to close the investigation of Ms. Edmundson without my input [Exhibit P90].

On January 10, 1997 I wrote a memo to Ms. Baswell regarding Ms. Wright's, (Ms. Edmundson's former and Mr. McBride's current secretary) threatening me in front of other employees that I was soon going to be terminated [Exhibit P91]. Ms. Wright's 'disruption in the workplace' was never investigated.

On January 13, 1997 I wrote a letter to EEOC

updating them on the continuing harassment that I was receiving from management of the IRS [Exhibit 98]. On January 14, 1997, I received a letter from Ms. Linda St. Amant of the EEOC Regional Complaints Center requesting additional time to investigate my complaint [Exhibit P92]. **The very next day**, on January 15, 1997, I received another letter dismissing all my complaints except the 15 day unpaid suspension [Exhibit P93].

To further confuse the matter, I received another letter from the EEOC on January 23, 1997 again dismissing all but one of my complaints. The letter also stated that "If you disagree with the issue(s), please notify me in writing within five (5) days of receipt of this letter. If no response is received, I will assume that you agree with the issues and will proceed with the investigation of the {one} complaint." This was a narrowing down the Complaints for Investigation letter not a Final Decision letter.

The letter continues "After receiving the Department's final decision on the remaining complaint, the complainant has the right to appeal it to the MSPB within 30 days of the receipt of the decisions **OR** may file a civil action with the appropriate federal district court within 30 days of receipt of the final decision" [Exhibit P94].

During that time, I found that this was the problem with dealing with both the EEOC and the Office of Special Counsel (OSC). Either no one understands what their duties are or there is a deliberate effort by these governmental agencies to sideline any complaints of reverse discrimination. In some instances it appears to be just ineptitude at work. For instance, OSC stated that I worked for the Department of Veteran Affairs not the Internal Revenue Service [Exhibit P95].

On January 24, 1997, I received a letter from Senator Coverdell's office confirming that they had received the information that I had sent them. The letter also stated

that they were forwarding my information to the IRS for investigation [Exhibit P96].

On January 27, 1997 Senator Coverdell's office sent my information to Mr. McBride, a named defendant in this case and one of the individuals named in my first EEOC complaint. In January of 1997, neither Senator Coverdell's office nor I knew that my information was being passed directly to the individual that was responsible for the placement of Mr. Word in the International Examination position.

As we both discovered later, Senator Coverdell's office thought the information was being sent to the Chief of the Examination Division, Mr. McBride. Senator Coverdell's office received the instruction to forward my information to Mr. McBride from Mr. Ayres, a named defendant in this case, and Mr. Butkovich, another named defendant [Exhibit P97].

On February 4, 1997, I wrote the EEOC Regional Complaint Center asking them if they had received any of my correspondence [Exhibit P98].

On February 12, 1997, in another instance of the continuing series of inconsistencies in my life, I had to specially request my 1996 W-2 in order to file my taxes because the IRS had not sent it to me [Exhibit P99].

On March 17, 1997 I received an acknowledgement by the EEOC that they had received my appeal of their decision to narrow the investigation of my EEOC complaints to the 15 day unpaid suspension. There has been no indication from the EEOC that I had filed the appeal with the wrong entity [Exhibit P100].

Please note that the instructions in the package specifically state that "In the event that the matter at issue in the complaint is appealable to the Merit Systems Protection Board, i.e., the matter is a mixed case, the Complainant may file a mixed case appeal with the MSPB OR may file a formal mixed case EEO complaint. **The Complainant may**

not file both an MSPB appeal and an EEO complaint on the same matter. The process selected first is deemed the elected process [§1614.302(b)]" [Exhibit P101]. The second EEOC complaint went formal on July 15, 1997.

On April 18, 1997, I received a letter Mr. Michael Nixon of Senator Coverdell's office that included an April 16, 1997 letter over the name of Gary D Bell (but signed by someone else) that stated the investigation of Ms. Edmundson had been completed [Exhibit P102].

The specific results of the Investigation were not shared with me. If they had been, I could have informed Mr. Bell that I had never been personally interviewed by Internal Inspection during the investigation as was stated in the Investigation Report [Exhibit P103].

When I received that letter I immediately called both Mr. Bell and Mr. Nixon. It was during my conversation with Mr. Nixon that I found out that Mr. McBride had been misrepresented as the Chief of the Examination Division to the Senator's office.

I immediately informed Mr. Willliam Cohen, Assistant Regional Inspector, Internal Inspection of the IRS, that Mr. McBride and Mr. Butkovich had interfered in the investigation of Ms. Edmundson's illegal actions [Exhibit P104].

On May 21, 1997, I filed my second EEOC complaint [97-1320] stating that Mr. McBride, Mr. Ayers, and Mr. Butkovich had intervened with the investigation of Ms. Edmundson's illegal actions [Exhibit P105].

When I informed my manager, Ms. Baswell, that I had filed my second EEOC complaint, she stated, "your 60 day opportunity letter will be coming within the next week". A 60-day opportunity letter is given to an employee of the IRS to notify them that they have 60 days to improve their performance or they will be terminated. During the 60 days the individuals' IRS manager is supposed to work with the

employee to help them improve their performance. The 60-day opportunity letter was issued to me on July 10, 1997

On June 24, 1997, I sent Mr. Bartlett, of EEOC, a letter listing the individuals in the IRS that I had contacted about Ms. Edmundson's illegal activities [Exhibit P106]. Please note that all the individually named Defendants in this case are also named in this correspondence.

When the 60- day opportunity letter was issued to me on July 10, 1997, I filed EEOC complaint # 3 [# 97-1372] stating that I was the recipient of harmful retaliatory actions and that I was subject to termination after 60 days.I also contacted the Office of Special Counsel to see if I could get some protection from termination under the Whistleblower Protection Act.

On July 17, 1997, I contacted Senator Canady's office requesting his help regarding my impending termination [Exhibit P108].

On August 27, 1997. I received a letter regarding EEOC complaint # 2 stating that the EEOC was dismissing the complaint because I had supposedly already raised the issue with NTEU [Exhibit P109].

I did not raise the issue of Mr. McBride, Mr. Ayers and Mr. Butkovich interfering with the investigation of Ms. Edmundson's illegal activities. I also never raised a harassment issue with the NTEU as is evidenced by a letter written by Mr. Butler, Chief Steward, NTEU [Exhibit 110].

On September 1, 1997, I wrote a memo to Ms. Baswell because I was not receiving any help or guidance from her in order to improve my performance while I was under the 60-day opportunity letter window. [Exhibit P111]. I also put in writing what I had previously discussed with Ms. Angela Rush of the office of Special Counsel.

On September 2, 1997, I wrote a letter to Mr. Richard Byrd, a named Defendant in this case, to inform him that someone was changing the Revenue Agent Reports that I

issued and thus issuing false government documents [Exhibit P112].

On September 9, 1997, I faxed information to Senator Trent Lott's office [Exhibit P113].

Because I was not getting any help from Ms. Baswell and also because I knew that she was undermining my authority with the taxpayer's that I was auditing by negotiating my cases with them behind my back, I decided to not sign out when I went on my next audit. On September 10 and 11, 1997, I successfully completed an audit and secured an agreement and a large adjustment because no one in IRS management knew where I was.

When I returned to work, I had to produce proof of where I was when I was in AWOL status [Exhibit P114]. The representative for the taxpayer wrote an unsolicited letter praising my conduct of the audit [Exhibit P115]. As I said before, the only difference between this audit and the other unsuccessful audits that I conducted was that IRS management did not know where I was.

On September 15, 1997, I contacted Representative Mac Collins to solicit his office's help regarding my approaching termination [Exhibit P116].

During the day of September 26, 1996, five different people came up to me and asked me if I had been fired. When I questioned Ms. Baswell about the rumor, she denied any knowledge of my impending termination.

On October 2, 1997, I was contacted by Ms. Kinnebrew of the EEOC Regional Complaint Center. She requested that I drop the termination portion of EEOC complaint # 3 since I had not been terminated yet. I wrote Ms. Kinnebrew a brief memo in order to document her request [Exhibit P117].

On October 3, 1997, I turned in a fraud referral that showed that the taxpayer owed at a minimum $ 1,352,032 in tax [Exhibit P118]. Because the management of the IRS was

more concerned with firing me than my being successful in the job, they refused to process the referral. My fraud referral is supported by the review of an independent CPA [Exhibit P119].

On October 7, 1997, I updated Senator Lott's office on the actions of IRS management [Exhibit P120].

On October 10, 1997, I was put on administrative leave [Exhibit P121]. I turned in all my cases, my credentials and my computer. A friend of mine told me later that by the time he had returned from helping me take my things to the car, management had already changed the locks on the doors where we worked.

After I was put on administrative leave, on October 24, 1997, I again contacted the Office of Special Counsel [Exhibit P122].

On November 15, 1997, I spoke at Newt Gingrich's town hall meeting. My comments were reported in the Atlanta Journal-Constitution. [Exhibit 123]. The following week I met with Mr. Valdez to make my Oral Reply regarding my proposed termination [Exhibit P124].

On November 17, 1997 I received a decision from the Office of Special Counsel. The most notable part of the decision was that **they thought I worked for the Department of Veteran Affairs not the IRS** [Exhibit P125]. I subsequently wrote a letter to the same office questioning why they had not gotten any of the information correct in their decision letter [Exhibit P126].

On November 28, 1997, I filed this case in District Court.

On December 27, 1997, I wrote a letter to Acting IRS Commissioner Mr. Michael Dolan in a last ditch attempt to let internal IRS management handle the obvious moral deterioration of the agency. He never responded to my letter. As other whistleblowers have found, IRS management is not interested in correcting the problems within the agency, they

are only interested in covering them up.

On January 10, 1998, I received notice that I was retroactively fired effective December 29, 1997 [Exhibit P127]. On February 13, 1998, I filed EEOC # 4 citing wrongful termination [Exhibit P128].

It turns out that I am not the only individual who has suffered from reverse discrimination tactics at the IRS. On May 9, 1997, in a ruling in the United States District Court, the Western District of Louisiana, the Shreveport Division, the IRS affirmative action plan – A Design for Organizational Diversity of Strategic Initiative, ERR-16, Minorities and Women Within the IRS (IRS Publication Document 7654 (9-90) (ERR-16) was declared to be unconstitutional [Exhibit P129].

The most informative part of the decision is that it reveals that managers who accomplish ERR-16 goals are monetarily rewarded and those who do not are punished. The monetary rewards given because of ERR-16 are also given in the Atlanta District [Exhibit P130].

Mr. Zachery, a named Defendant, in His October 27, 2004 Deposition states "I am not familiar with a program specifically directed at minorities." And "I am not familiar with a program specifically directed at minorities" [Exhibit P131, October 27, 2004 Deposition of Defendant Zachery]. However, Mr. Zachery signed the monthly ERR-16 reports that specifically listed the minorities that were promoted within the Atlanta District [Exhibit P132].

Mr. Zachery, like Mr. McBride, obviously is not uncomfortable with lying about anything even if his lie can be disproved on paper.

Despite this lengthy affidavit, I have not addressed all the discriminatory and retaliatory acts that were inflicted on me while I was in the Atlanta District of the IRS. I just hit the high points or actually, from my point of view, the low points. I only survived the experience with the help of many

good IRS employees who are as upset at the tactics used by the individually named Defendants as I am.

I am not the only IRS employee who reported illegal acts to Internal Inspection and no action was taken. I am not the only IRS employee who suffered from Ms. Edmundson's and Mr. McBride's uncontrollable tempers. I am not the only whistleblower whose reports have been ignored by management of the IRS [Exhibit P133].

There are many former IRS employees who are willing to testify at my trial. There are also some current IRS employees who have stated that they will testify at my trial even though they know it would be detrimental to their careers.

It has been a very long process to get my case to trial. I would never have invested so much time if I were not convinced that it was mandatory to get the corruption of the Atlanta District before a jury and the American public. I can not believe that any taxpaying jury will like the fact that the individually named Defendants gave away over $ 2,300,000 of their money in order to get me fired.

I am hopeful that the individually named Defendants will be terminated from their powerful positions once their illegal and unethical actions are exposed.

I am a resident of Fulton County, Georgia and am over the age of 18. I have been a resident of Georgia since 1994. I represent that the information provided here is the truth to the best of my knowledge.

Sarah Hendrix

January 3, 2005

J

U.S. District Court
Northern District of Georgia (Atlanta)
CIVIL DOCKET FOR CASE #: 1:97-cv-03579-RWS

Hendrix v. Rubin, et al
Assigned to: Judge Richard W. Story
Demand: $300,000
Cause: 42:2000 Job Discrimination (Race)

Date Filed: 11/28/1997
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: U.S. Government Defendant

Plaintiff
Sarah E. Hendrix

represented by
Gordon Joseph Rose
Air Line Pilots Association
100 Hartsfield Centre Pkway
Suite 200
Atlanta, GA 30354
404-763-4925
Email: gordon.rose@alpa.org
TERMINATED: 02/22/2002
LEAD ATTORNEY

Gordon Joseph Rose
(See above for address)
TERMINATED: 02/25/2002
LEAD ATTORNEY

Melissa B. Silverman
Weizenecker Rose Mottern & Fisher
1800 Peachtree Street
Suite 620
Atlanta, GA.30309
404-365-9799
Email: Melissa@room357.net
TERMINATED: 02/25/2002
LEAD ATTORNEY

Rebecca Hulsey
Office of Rebecca Hulsey Keaton
244 Roswell Street
Suite 400
Marietta, GA 30060
770-425-2700
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Richard Segerblom
Office of Richard Segerblom
704 South Ninth Street
Las Vegas, NV 89101
702-388-9600
LEAD ATTORNEY
Roy B. Roberts
Office of Roy B. Roberts
244 Roswell Street
Suite 400
Marietta, GA 30060
770-425-2700
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Stephen G. Weizenecker
Weizenecker Mottern & Fisher
1800 Peachtree Street
Suite 620
Atlanta, GA 30309
404-365-9799
Email: SGW@wmflawyers.com
TERMINATED: 02/25/2002
LEAD ATTORNEY

Robert Thomas Thompson, Jr.
Thompson & Associates
Second Floor
P.O. Box 53484
2931 Piedmont Road, N.E.
Atlanta, GA 30355-1484
404-816-0500
Fax: (404) 816-6856
Email: rttjr@mindspring.com
TERMINATED: 02/18/2000

Wayne Darrin Keaton
Office of W. Darrin Keaton
27 Courthouse Square
Dallas, GA 30132
770-443-6060
Email: keatonpc@bellsouth.net

V.

Defendant

Robert E. Rubin
Secretary of the Department of the Treasury of the United States of America
TERMINATED: 11/26/2004

represented by
Jane Wilcox Swift
Office of United States Attorney
Northern District of Georgia
75 Spring Street, S.W.
600 United States Courthouse
Atlanta, GA 30303
404-581-6000
Email: Jane.Swift@usdoj.gov
TERMINATED: 08/07/1998
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lori M. Beranek
Office of United States
Attorney
Northern District of Georgia
75 Spring Street, S.W.
600 United States Courthouse
Atlanta, GA 30303
404-581-6350 Direct
Email: lori.beranek@usdoj.gov
LEAD ATTORNEY

Robert David Powell
Office of United States
Attorney
Northern District of Georgia
75 Spring Street, S.W.
600 United States Courthouse
Atlanta, GA 30303
404-581-6004
Email: R.David.
Powell@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED

Rolando Enrique Bascumbe
467 Lee's Trace
Marietta, GA 30064
404-656-3614
Email: resquire@juno.com
TERMINATED: 10/06/1998
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED

Defendant **United States**	represented by **Robert David Powell** (See above for address) LEAD ATTORNEY ATTORNEY TO BE NOTICED
Defendant **Secretary John W. Snow** Secretary of the Department of Treasury of the United States of America	represented by **Robert David Powell** (See above for address) LEAD ATTORNEY ATTORNEY TO BE NOTICED
Movant **W. Darrin Keaton**	represented by **Wayne Darrin Keaton** (See above for address) LEAD ATTORNEY ATTORNEY TO BE NOTICED
Defendant **Wanda Edmundson**	represented by **Robert David Powell** (See above for address) TERMINATED: 06/20/2003 LEAD ATTORNEY ATTORNEY TO BE NOTICED

Defendant
Michael McBride

represented by
Robert David Powell
(See above for address)
TERMINATED: 06/20/2003
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED

Defendant
John Butkovich

represented by
Robert David Powell
(See above for address)
TERMINATED: 06/20/2003
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED

Defendant
William Zachery

represented by
Robert David Powell
(See above for address)
TERMINATED: 06/20/2003
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED

Defendant
Ty Ayres

represented by
Robert David Powell
(See above for address)
TERMINATED: 06/20/2003
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED

Defendant
Richard Byrd

represented by
Robert David Powell
(See above for address)
TERMINATED: 06/20/2003
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED

Vol. 1

Date Filed	#	Docket Text
11/28/1997	1	COMPLAINT filed. Consent form to proceed before U.S. magistrate and pretrial instructions given to attorney; jury demand; FILING FEE $ 150.00 RECEIPT # 416675 (fmr emp) (Entered: 12/02/1997)
11/28/1997		CASE REFERRED to Mag Judge Joel M. Feldman (Calendar sheets & notice forwarded to JMF & GET) (fmr emp) (Entered: 12/02/1997)
12/09/1997	2	Application for admission of Richard Segerblom pro hac vice for pla (to GET) (fmr emp) (Entered: 12/11/1997)
12/12/1997		ENDORSED ORDER by Judge G. E. Tidwell GRANTING [2-1] pro hac vice application as to Richard Segerblom. (cc) (fmr emp) (Entered: 12/15/1997)
01/12/1998	3	ANSWERS TO MANDATORY DISCLOSURES by plaintiff (fmr emp) (Entered: 01/13/1998)

Vol. 1 Cont'd.

02/10/1998		Case reassigned to Judge Richard W. Story. Calendar sheets forwarded and notice mailed to counsel. (fmr emp) (Entered: 02/10/1998)
02/19/1998		Added attorney for plaintiff: Gordon Joseph Rose. (oug) (Entered: 02/19/1998)
02/25/1998	4	Attorney appearance for plaintiff by Robert Thomas Thompson Jr., Stephen G. Weizenecker and Gordon J. Rose. (oug) (Entered: 02/27/1998)
03/02/1998	5	MOTION by defendant to extend time to respond to [1-1] complaint (oug) (Entered: 03/03/1998)
03/16/1998	6	ANSWER by defendant to complaint [1-1] Discovery ends 8/13/98 (oug) (Entered: 03/25/1998)
03/31/1998	7	ANSWERS TO MANDATORY DISCLOSURES by defendant (oug) (Entered: 04/12/1998)
04/01/1998		SUBMITTED to Mag Judge Joel M. Feldman on [5-1] motion to extend time to respond to [1-1] complaint (oug) (Entered: 04/01/1998)
04/07/1998	8	ORDER by Mag Judge Joel M. Feldman GRANTING [5-1] motion to extend time to respond to [1-1] complaint, Answer due 3/16/98 for Robert E. Rubin (cc) (oug) (Entered: 04/08/1998)
04/15/1998	9	Preliminary Statement and Scheduling Order. (to mag judge) (oug) (Entered: 04/30/1998)

Vol. 1 Cont'd.

05/05/1998		ENDORSED ORDER with Attachment A on statement by Mag Judge Joel M. Feldman APPROVING [9-1] preliminary statement (cc) (bsm) (Entered: 05/08/1998)
06/25/1998	10	MOTION by plaintiff to amend [1-1] complaint with proposed second amended complaint attached hereto (jaw) (Entered: 06/30/1998)
07/13/1998		Proposed Answer to amended complaint contained in [10-1] motion to amend [1-1] complaint by defendant. (fmm) (Entered: 07/16/1998)
07/16/1998		SUBMITTED to Mag Judge Joel M. Feldman on [10-1] motion to amend [1-1] complaint, proposed answer to amended complaint (fmm) (Entered: 07/16/1998)
07/20/1998	11	ORDER by Mag Judge Joel M. Feldman GRANTING [10-1] motion to amend [1-1] complaint (cc) (fmr emp) (Entered: 07/20/1998)
07/20/1998		Terminated submissions. (fmr emp) (Entered: 07/20/1998)
07/20/1998	12	AMENDED COMPLAINT by plaintiff; jury demand (fmr emp) (Entered: 07/20/1998)
07/20/1998	13	ANSWER by defendant to second amended complaint [12-1] (fmr emp) (Entered: 07/20/1998)

Vol. 1 Cont'd.

07/31/1998	14	Joint MOTION to extend time for discovery (to JMF) (so) (Entered: 08/04/1998)
08/07/1998	15	Certification of Consent to Substitution of Counsel for defendant Robert E. Rubin. Lori M. Beranek replacing attorney Jane Wilcox Swift for Robert E. Rubin. (pa) (Entered: 08/10/1998)
08/10/1998	16	ORDER by Mag Judge Joel M. Feldman GRANTING [14-1] joint motion to extend time for discovery; Discovery ends 10/16/98 (cc) (bj) (Entered: 08/11/1998)
10/01/1998	17	Notice to take deposition of plaintiff by defendant (pdw) (Entered: 10/05/1998)
10/06/1998	18	Joint MOTION by parties to extend time to complete discovery and file dispositive motions with brief in support and proposed order. (to mag) (pdw) (Entered: 10/07/1998)
10/06/1998	19	Certification of Consent to Substitution of Counsel for defendant Robert E. Rubin . Robert David Powell & Lori M. Beranek replacing attorney Rolando Enrique Bascumbe. (pa) (Entered: 10/14/1998)
10/08/1998	19	ORDER by Mag Judge Joel M. Feldman GRANTING [18-1] joint motion to extend time to complete discovery and file dispositive motions, Discovery ends 1/14/99 (cc) (pdw) (Entered: 10/15/1998)

Vol. 1 Cont'd.

11/23/1998	20	MOTION by defendant for entry of protective order with brief in support and proposed order. (pdw) (Entered: 11/24/1998)
11/30/1998	21	Notice to take deposition of Sarah E. Hendrix by defendant (pdw) (Entered: 12/01/1998)
12/10/1998		SUBMITTED to Mag Judge Joel M. Feldman on [20-1] motion for entry of protective order (pdw) (Entered: 12/10/1998)
12/11/1998	22	Partial Opposition by plaintiff to [20-1] motion for entry of protective order (pdw) (Entered: 12/14/1998)
12/15/1998	23	ORDER by Mag Judge Joel M. Feldman, motion hearing set for [20-1] motion for entry of protective order 11:00 12/22/98 (cc served by mag) (pdw) (Entered: 12/16/1998)
12/16/1998	24	Joint MOTION by parties for entry of a discovery scheduling order with brief in support and proposed consent discovery scheduling order. (to JMF) (pdw) (Entered: 12/18/1998)

Vol. 1 Cont'd.

12/17/1998	25	TELEPHONE DISCOVERY CONFERENCE before Mag Judge Joel M. Feldman; motion for protective order GRANTED IN PART, motion to extend discovery GRANTED IN PART, counsel will file written motion and proposed order; parties joint motion to reopen discovery after the motion for sum jgm DENIED without prej; motion hearing set for 12/22/98 cancelled as moot. (pdw) (Entered: 12/18/1998)
12/22/1998	26	ORDER by Mag Judge Joel M. Feldman CANCELLING hearing scheduled for 12/22/98 as the pla's objections to dft's motion for protective order [20-1] were addressed in teleconference held 12/16/98. (cc) (pdw) (Entered: 12/22/1998)
12/22/1998		Terminated submissions. (pdw) (Entered: 12/22/1998)
12/22/1998	27	PROTECTIVE ORDER ENTERED by Magistrate Judge Joel M. Feldman. (pdw) (Entered: 01/07/1999)
01/14/1999	28	MOTION by defendant to compel discovery from plaintiff with brief in support. (pdw) (Entered: 01/15/1999)

Vol. 1 Cont'd.

01/19/1999	29	Motion HEARING held 1/14/99 before Mag Judge Joel M. Feldman on [28-1] motion to compel discovery from plaintiff, motion GRANTED IN PART, UNDER ADVISEMENT IN PART: dft directed to provide personnel files of comparators who applied for I/E position, pla has 30 days to answer dft's responses, pla may examine documents w/out her atty present but may not discuss the merits of the case, dft's clerk will be present but dft may not have to produce documents until pla has answered dft's responses, pla responses to dft's resquests must be verified responses, dft will advise Court by 2/14/99 whether Court should reconvene the motion hearing, dft will depose pla w/in 30 days to reschedule pla's deposition. (pdw) (Entered: 01/19/1999)
02/19/1999	30	STATUS REPORT by dft concerning plaintiff's court-ordered discovery responses and the need for additional proceedings on dft's motion to compel discovery from plaintiff . (pdw) (Entered: 02/22/1999)
03/05/1999	31	ORDER by Mag Judge Joel M. Feldman, motion hearing set for [28-1] motion to compel discovery from plaintiff 1:30 3/24/99 (cc by crd) (pdw) (Entered: 03/05/1999)

Vol. 2

03/09/1999	32	Brief by plaintiff in Opposition to dft's [30-1] status report (pdw) (Entered: 03/10/1999)
03/18/1999 **Vol. 16**		TRANSCRIPT filed RE: tape-recorded proceedings before Magistrate Judge Joel M. Feldman for 1/14/99 Court Reporter: David A. Ritchie – (pdw) (Entered: 03/23/1999)
03/25/1999	33	Motion HEARING held before Mag Judge Joel M. Feldman [28-1] motion to compel discovery from plaintiff, motion granted in part; pla has 14 days to provide dft with discovery material; if discovery issues aren't resolved, parties may petition Court again in 30 days. (pdw) (Entered: 03/26/1999)
03/25/1999		VERBAL ORDER by Mag Judge Joel M. Feldman GRANTING IN PART AND DENYING IN PART [28-1] motion to compel discovery from plaintiff by Robert E. Rubin (pdw) (Entered: 03/26/1999)
04/07/1999	34	Statement by defendant Robert E. Rubin of attorney's fees incurred to litigate [28-1] motion to compel discovery from plaintiff (pdw) (Entered: 04/08/1999)
04/09/1999	35	Notice to take deposition of Sarah E. Hendrix by defendant (bsm) (Entered: 04/12/1999)
04/14/1999	37	Response by defendant to [36-1] motion for protective order (pdw) (Entered: 04/16/1999)

Vol. 2 Cont'd.

04/15/1999	36	EMERGENCY MOTION by plaintiff for protective order with brief in support. (pdw) (Entered: 04/16/1999)
4/16/1999	38	Notice of stay in bankruptcy by defendant. (pdw) (Entered: 04/19/1999)
04/20/1999	39	Motion HEARING held before Mag Judge Joel M. Feldman [36-1] emergency motion for protective order, motion DENIED, written order to follow. (pdw) (Entered: 04/20/1999)
04/22/1999	40	ORDER by Mag Judge Joel M. Feldman DENYING AS MOOT the [36-1] motion for protective order by Sarah E. Hendrix, as pending the resolution of the bankruptcy matter the Government does not presently intend to go forward with the scheduled deposition of pla (cc) (pdw) (Entered: 04/22/1999)
10/27/1999	41	ORDER by Mag Judge Joel M. Feldman, the consolidated pretrial order and motion for sum jgm has not been filed. The pla must show cause w/in 10 days why this case should not be dismissed. The dft must also show cause w/in 10 days why the Court should not certify that he be held in contempt for failure to comply w/ Local Rules. [41-1] order to be submitted on 11/9/99 re: parties show cause. (cc) (web) (Entered: 10/28/1999)
11/01/1999	42	Notice of stay in bankruptcy and response to [41-1] show cause order by dft (pdw) (Entered: 11/02/1999)

Vol. 2 Cont'd.

11/09/1999	43	Response by plaintiff to [41-1] order to show cause why case should not be dismissed. (pdw) (Entered: 11/09/1999)
11/10/1999		SUBMITTED to Mag Judge Joel M. Feldman on [41-1] order for parties to show cause. (pdw) (Entered: 11/10/1999)
11/17/1999	44	ORDER by Mag Judge Joel M. Feldman, staying proceedings by virtue of the automatic stay provision of the Bankruptcy Code as plaintiff has filed a voluntary bankruptcy petition, pending further order of the Bankruptcy Court. (cc) (pdw) (Entered: 11/17/1999)
11/17/1999		Terminated submissions. (pdw) (Entered: 11/17/1999)
02/18/2000	45	Notice of Substitution of Counsel for plaintiff Sarah E. Hendrix. Gordon Joseph Rose replacing attorney Robert Thomas Thompson for Sarah E. Hendrix. (pdw) (Entered: 02/22/2000)
08/31/2000	46	Notice of substitution of Counsel for plaintiff Sarah E. Hendrix. Gordon J. Rose and Stephen G. Weizenecker appearing as attorneys for plaintiff. (bek) (Entered: 09/01/2000)
12/12/2000	47	ORDER by Judge Richard W. Story, that the clerk administratively and statistically terminate the action pending completion of bankruptcy proceedings. The matter may be reopened upon request of counsel. (cc) (ck) (Entered: 12/13/2000)

Vol. 2 Cont'd.

12/12/2000		Case terminated. (ck) (Entered: 12/13/2000)
12/12/2000		Completed referral to Mag Judge Joel M. Feldman (ck) (Entered: 12/14/2000)
01/29/2001	48	MOTION by plaintiff to lift stay so the case may be reinstated & proceed with brief in support. (ck) (Entered: 01/30/2001)
01/29/2001	49	MOTION by plaintiff to file 2nd amendment to the [1-1] complaint with brief & proposed 2nd amended complaint in support. (ck) (Entered: 01/30/2001)
02/13/2001	50	Response by defendant to [48-1] motion to lift stay so the case may be reinstated & proceed (ck) (Entered: 02/14/2001)
02/13/2001	51	Response by defendant to [49-1] motion to file 2nd amendment to the [1-1] complaint (ck) (Entered: 02/14/2001)

Vol. 3

02/14/2001		SUBMITTED to Judge Richard W. Story on [48-1] motion to lift stay so the case may be reinstated & proceed, [49-1] motion to file 2nd amendment to the [1-1] complaint (ck) (Entered: 02/14/2001)
03/05/2001	52	Reply brief to [49-1] motion to file 2nd amendment to the [1-1] complaint by plaintiff. (ck) (Entered: 03/07/2001)

Vol. 3 Cont'd.

03/06/2001	53	Amendment to index & to exhibits attached to the [52-1] reply brief to the [49-1] motion to file 2nd amendment to the [1-1] complaint by the plaintiff. (ck) (Entered: 03/07/2001)
04/17/2001	54	ORDER by Judge Richard W. Story GRANTING [48-1] motion to lift stay so the case may be reinstated & proceed, DENYING [49-1] motion to file 2nd amendment to the [1-1] complaint by Sarah E. Hendrix (cc) (ck) (Entered: 04/18/2001)
04/17/2001		Terminated submissions. (ck) (Entered: 04/18/2001)
04/25/2001	55	Notice of change of address of counsel for plaintiff. (ck) (Entered: 04/26/2001)
04/25/2001		Added attorney for plaintiff: Melissa Silverman. (ck) (Entered: 04/30/2001)
05/04/2001	56	MOTION by plaintiff for reconsideration of [54-1] order with memorandum in support. (kt) (Entered: 05/07/2001)
05/08/2001	57	MOTION by defendant to reopen discovery for an additional six months with brief in support. (ck) (Entered: 05/09/2001)
05/21/2001	58	Response by defendant in opposition to [56-1] motion for reconsideration of [54-1] order (ck) (Entered: 05/22/2001)

Vol. 3 Cont'd.

05/22/2001		SUBMITTED to Judge Richard W. Story on [56-1] motion for reconsideration of [54-1] order (ck) (Entered: 05/22/2001)
05/25/2001	59	Opposition by plaintiff to [57-1] motion to reopen discovery for an additional six months (ck) (Entered: 05/29/2001)
05/25/2001	60	MOTION by plaintiff to preserve certain evidence from destruction with brief in support. (ck) (Entered: 05/29/2001)
05/25/2001	61	MOTION by plaintiff for clarification of the verbal order issued 3/25/99 with brief in support. (ck) (Entered: 05/29/2001)
05/29/2001		SUBMITTED to Judge Richard W. Story on [57-1] motion to reopen discovery for an additional six months (FILE IN CHAMBERS) (ck) (Entered: 05/29/2001)
06/07/2001	62	Reply brief to [56-1] motion for reconsideration of [54-1] order by plaintiff. (ck) (Entered: 06/08/2001)
06/12/2001	63	Response by defendant in opposition to [60-1] motion to preserve certain evidence from destruction, [61-1] motion for clarification of the verbal order issued 3/25/99 (ck) (Entered: 06/13/2001)

Vol. 3 Cont'd.

06/13/2001		SUBMITTED to Judge Richard W. Story on [60-1] motion to preserve certain evidence from destruction, [61-1] motion for clarification of the verbal order issued 3/25/99 (FILE IN CHAMBERS) (ck) (Entered: 06/13/2001)
06/25/2001	64	Reply brief to [60-1] motion to preserve certain evidence from destruction by plaintiff. (ck) (Entered: 06/27/2001)
06/25/2001	65	Reply brief to [61-1] motion for clarification of the verbal order issued 3/25/99 by plaintiff. (ck) (Entered: 06/27/2001)

Vol. 4

07/20/2001	66	MOTION by plaintiff to compel discovery, request for hearing , and for award of attorney's fees against Robert E. Rubin with brief & exhibits in support. (ck) (Entered: 07/23/2001)
07/24/2001	67	MOTION by plaintiff to substitute the exhibit & proposed order contained in the [66-1], [66-2], & [66-3] motion to comel, for hearing, & for discovery with brief in support. (ck) (Entered: 07/25/2001)

Vol. 4 Cont'd.

08/06/2001	68	ORDER by Mag Judge Joel M. Feldman GRANTING [67-1] motion to substitute the exhibit & proposed order contained in the [66-1], [66-2], & [66-3] motion to comel, for hearing, & for discovery (cc) (ck) (Entered: 08/06/2001)
08/06/2001	69	Response by defendant in partial opposition to [66-1] motion to compel discovery, [66-2] motion request for hearing, [66-3] motion for award of attorney's fees against Robert E. Rubin (ck) (Entered: 08/07/2001)
08/07/2001		SUBMITTED to Judge Richard W. Story on [66-1] motion to compel discovery, [66-2] motion request for hearing, [66-3] motion for award of attorney's fees against Robert E. Rubin (FILE IN CHAMBERS) (ck) Modified on 08/07/2001 (Entered: 08/07/2001)

Vol. 4 Cont'd.

08/13/2001	70	ORDER by Judge Richard W. Story GRANTING [56-1] motion for reconsideration of [54-1] order, [54-1] order is VACATED to the extent that is denied Plaintiff's motion to file a second amended complaint, GRANTING [49-1] motion to file 2nd amendment to the [1-1] complaint, GRANTING [57-1] motion to reopen discovery for an six months, Discovery ends 2/11/02 ; Case is REFERRED back to Judge Feldman for consideration of any other pending motions & other pretrial issues which may arise. (cc) (ck) (Entered: 08/13/2001)
08/13/2001		Terminated submissions. (ck) (Entered: 08/13/2001)
08/13/2001		CASE REFERRED back to Mag Judge Joel M. Feldman (Calendar sheets forwarded) (ck) (Entered: 08/13/2001)
08/13/2001	71	SECOND AMENDED COMPLAINT, by plaintiff adding Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres, Richard Byrd; jury demand (ck) (Entered: 08/13/2001)
08/13/2001		Terminated submissions. (ck) (Entered: 08/14/2001)

08/14/2001		SUBMITTED to Mag Judge Joel M. Feldman on [60-1] motion to preserve certain evidence from destruction, [61-1] motion for clarification of the verbal order issued 3/25/99, [66-1] motion to compel discovery, [66-2] motion request for hearing, [66-3] motion for award of attorney's fees against Robert E. Rubin (FILE IN CHAMBERS) (ck) (Entered: 08/14/2001)
08/14/2001	72	MOTION by plaintiff to sequester witnesses & exclude persons from depositions, and for protective order with brief and proposed order in support. (ck) (Entered: 08/15/2001)
08/20/2001	73	ORDER by Mag Judge Joel M. Feldman, motion hearing set for [60-1] motion to preserve, [66-1] motion to compel, [66-2] motion request for hearing, and [66-3] motion for award of attorney's fees for 10:30 am on 9/10/01; and, DENYING [61-1] motion for clarification of the verbal order issued 3/25/99; plaintiff is to submit a transcript of any Court orders which she asks to be clarified. (cc by mag) (ck) (Entered: 08/22/2001)

Vol. 4 Cont'd.

08/23/2001	74	REPLY by plaintiff to response to [66-1] motion to compel discovery, [66-2] motion request for hearing, [66-3] motion for award of attorney's fees against Robert E. Rubin. (lme) (Entered: 08/29/2001)
09/06/2001		SUBMITTED to Mag Judge Joel M. Feldman on [72-1] motion to sequester witnesses & exclude persons from depositions, [72-2] motion for protective order (FILE IN CHAMBERS) (ck) (Entered: 09/06/2001)
09/13/2001	75	ORDER by Mag Judge Joel M. Feldman, hearing rescheduled for 2:00pm on 9/17/01 (cc by mag office) (lme) (Entered: 09/14/2001)
09/17/2001	76	Motion HEARING held before Mag Judge Joel M. Feldman on [72-1] motion to sequester witnesses & exclude persons from depositions – moot, [72-2] motion for protective order – moot, [66-1] motion to compel discovery – granted in part/denied in part, [66-2] motion request for hearing – granted, [66-3] motion for award of attorney's fees against Robert E. Rubin – denied, [60-1] motion to preserve certain evidence from destruction – granted in part/ denied in part. Clerk's office directed to correct spelling of dfts names added in the amended complaint. (lme) (Entered: 09/21/2001)

Vol. 4 Cont'd.

09/17/2001		VERBAL ORDER by Mag Judge Joel M. Feldman GRANTING IN PART AND DENYING IN PART [60-1] motion to preserve certain evidence from destruction by Sarah E. Hendrix, GRANTING IN PART AND DENYING IN PART [66-1] motion to compel discovery by Sarah E. Hendrix, GRANTING [66-2] motion request for hearing, DENYING [66-3] motion for award of attorney's fees against Robert E. Rubin by Sarah E. Hendrix, denying as moot the [72-1] motion to sequester witnesses & exclude persons from depositions by Sarah E. Hendrix, denying as moot the [72-2] motion for protective order by Sarah E. Hendrix (lme) (Entered: 09/21/2001)
09/17/2001		Terminated submissions. (lme) (Entered: 09/21/2001)
12/06/2001 **Vol. 17**	77	AUDIOTAPE TRANSCRIPT filed RE: Motion Proceedings before Judge Feldman on 9/17/01. Court Reporter: Lori Burgess (lme) (Entered: 12/10/2001)
12/14/2001	78	MOTION by plaintiff to withdraw by Melissa B. Silverman, Gordon Joseph Rose, Stephen G. Weizenecker as attys for Sarah E. Hendrix with brief in support and proposed order. (lme) (Entered: 12/17/2001)

Vol. 4 Cont'd.

01/10/2002		SUBMITTED to Mag Judge Joel M. Feldman on [78-1] motion to withdraw by Melissa B. Silverman, Gordon Joseph Rose, Stephen G. Weizenecker as attys for Sarah E. Hendrix (lme) (Entered: 01/10/2002)
01/23/2002	80	Reply to pla's letter in response to [78-1] motion to withdraw by Melissa B. Silverman, Gordon Joseph Rose, Stephen G. Weizenecker as attys for Sarah E. Hendrix by plaintiff. (lme) (Entered: 01/29/2002)
01/23/2002	81	MOTION by pla for protective order to file documents under seal with proposed order. (lme) (Entered: 01/29/2002)
01/23/2002	82	PROTECTIVE ORDER ENTERED by Judge Feldman. (lme) (Entered: 01/29/2002)
01/23/2002 **Vol. 4 Under Seal**	83	Notice of filing exhibits to the reply to pla's letter in response to motion to withdraw as pla's counsel of record by plaintiff. (***Filed Under Seal***) (lme) (Entered: 01/29/2002)
01/25/2002	79	ORDER by Mag Judge Joel M. Feldman GRANTING [78-1] motion to withdraw by Melissa B. Silverman, Gordon Joseph Rose, Stephen G. Weizenecker as attys for Sarah E. Hendrix; plaintiff shall have 30 days from this date to obtain new counsel; [79-1] order to be submitted on 3/5/02 (cc) (ck) (Entered: 01/29/2002)

Vol. 4 Cont'd.

01/25/2002		Terminated submissions. (ck) (Entered: 01/29/2002)
01/28/2002	84	Response by plaintiff in opposition to [78-1] motion to withdraw by Melissa B. Silverman, Gordon Joseph Rose, Stephen G. Weizenecker as attys for Sarah E. Hendrix. (lme) (Entered: 01/29/2002)
02/22/2002	85	Attorney appearance for plaintiff by Rebecca Hulsey and Roby B. Roberts. (lme) (Entered: 02/25/2002)
02/25/2002	86	Attorney appearance for plaintiff by W. Darrin Keaton. (lme) (Entered: 02/25/2002)
03/06/2002		SUBMITTED to Mag Judge Joel M. Feldman on [79-1] order. (lme) (Entered: 03/06/2002)
03/07/2002	87	Objections by Paul H. O'Neil, Secretary of the Treasury to upapproved special counsel of [85-1] atty appearance of Rebecca Hulsey and Roy B. Robers, [86-1] atty appearance W. Darrin Keaton. (lme) (Entered: 03/08/2002)
04/11/2002	88	Amendment to Certificate of interested persons. (to judge & mag) (lme) Modified on 04/12/2002 (Entered: 04/12/2002)
05/28/2002		SUBMITTED to Mag Judge Joel M. Feldman on [87-1] objections. (lme) (Entered: 05/28/2002)

Vol. 4 Cont'd.

06/07/2002 **Vol. 18**	89	TRANSCRIPT filed RE: for dates of 3/25/99 Court Reporter: Sharon D. Upchurch – MOTIONS HEARING (ck) (Entered: 06/10/2002)
06/07/2002	90	ORDER by Mag Judge Joel M. Feldman DENYING [87-1] objections by Robert E. Rubin (cc) (als) (Entered: 06/10/2002)
06/10/2002		Terminated submissions. (als) (Entered: 06/10/2002)
07/22/2002	91	Summons issued for defendants Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres and Richard Byrd. (lme) (Entered: 07/23/2002)
08/02/2002	92	Joint MOTION for re-opening of discovery period for four months with proposed order. (To JMF) (lme) (Entered: 08/02/2002)
08/07/2002	93	CONSENT ORDER by Mag Judge Joel M. Feldman GRANTING [92-1] joint motion for re-opening of discovery period for four months, Discovery ends 12/9/02. (cc) (lme) (Entered: 08/08/2002)
08/16/2002	94	Return of service executed 8/11/02 as to Richard Byrd, John Butkovich and William Zachery on original complaint. (lme) (Entered: 08/16/2002)
08/16/2002	95	Return of service executed 8/12/02 as to Wanda Edmundson, Ty Ayres. (lme) (Entered: 08/16/2002)

Vol. 4 Cont'd.

08/16/2002	96	Return of service executed 8/14/02 as to Michael McBride (lme) (Entered: 08/16/2002)
10/10/2002	97	MOTION by defendants to extend time within which to answer or otherwise respond to the [71-1] amended complaint of the later of 60 days from the date of this motion, or 60 days from pla's completion of service in accordance w/FRCP 4(i)(2)(B) with brief in support. (lme) (Entered: 10/11/2002)
10/30/2002	98	Response by plaintiff in opposition to [97-1] motion to extend time within which to answer or otherwise respond to the [71-1] amended complaint of the later of 60 days from the date of this motion, or 60 days from pla's completion of service in accordance w/ FRCP 4(i)(2)(B). (lme) (Entered: 10/31/2002)
11/04/2002		SUBMITTED to Mag Judge Joel M. Feldman on [97-1] motion to extend time within which to answer or otherwise respond to the [71-1] amended complaint of the later of 60 days from the date of this motion, or 60 days from pla's completion of service in accordance w/ FRCP 4(i)(2)(B). (lme) (Entered: 11/04/2002)

Vol. 4 Cont'd.

11/06/2002	99	ORDER by Mag Judge Joel M. Feldman GRANTING [97-1] motion to extend time within which to answer or otherwise respond to the [71-1] amended complaint of the later of 60 days from the date of this motion, or 60 days from pla's completion of service in accordance w/ FRCP 4(i)(2)(B). (cc) (lme) (Entered: 11/07/2002)
11/06/2002		Terminated submissions. (lme) (Entered: 11/07/2002)
11/21/2002	100	MOTION by plaintiff to extend time thru 3/10/03 for discovery with brief in support. (ck) (Entered: 11/25/2002)
11/22/2002	101	Response by dft O'Neill to [100-1] motion to extend time thru 3/10/03 for discovery. (lme) (Entered: 11/26/2002)
12/09/2002		SUBMITTED to Mag Judge Joel M. Feldman on [100-1] motion to extend time thru 3/10/03 for discovery. (lme) (Entered: 12/09/2002)
12/11/2002		Terminated submissions. (fmm) (Entered: 12/12/2002)
12/12/2002	102	ORDER by Mag Judge Joel M. Feldman GRANTING [100-1] motion to extend time thru 3/10/03 for discovery, Discovery ends 3/11/03 (cc) (fmm) (Entered: 12/12/2002)

Vol. 4 Cont'd.

01/23/2003	103	MOTION by pla for clerk to enter default as to Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres, Richard Byrd with brief in support. (lme) (Entered: 01/24/2003)

Vol. 5

01/24/2003	104	MOTION by defendant Michael McBride to dismiss, or for summary judgment on all causes of action pleaded against him in the second amended complaint with brief in support and statement of material facts. (ntc sent to cnsl) (slc) (Entered: 01/28/2003)
01/24/2003	105	MOTION by defendant Ty Ayres to dismiss, or for summary judgment on all causes of action pleaded against him in the second amended complaint with brief in support and statement of material facts. (ntc sent to cnsl) (slc) (Entered: 01/28/2003)
01/24/2003	106	MOTION by defendant John Butkovich to dismiss, or for summary judgment on all causes pleaded against him in the second amended complaint with brief in support and statement of material facts. (ntc sent to cnsl) (slc) Modified on 01/28/2003 (Entered: 01/28/2003)

Vol. 5 Cont'd.

01/24/2003	107	MOTION by defendant William Zachery to dismiss, or for summary judgment on all causes of action pleaded against him in the second amended complaint with brief in support and statement of material facts. (ntc sent to cnsl) (slc) (Entered: 01/28/2003)
01/24/2003	108	MOTION by defendant Wanda Edmundson to dismiss, or for summary judgment on all causes of action pleaded against her in the second amended complaint with brief in support and statement of material facts. (ntc sent to cnsl) (slc) (Entered: 01/28/2003)
02/10/2003	109	MOTION by plaintiff for leave to amend [1-1] complaint with brief in support. (lme) (Entered: 02/11/2003)

Vol. 6

02/10/2003	110	Response by dft Wanda Edmundson in opposition to [103-1] motion for clerk to enter default as to Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres and Richard Byrd... (lme) (Entered: 02/11/2003)
02/10/2003	110	MOTION by dft Wanda Edmundson to open default with brief in support. (contained w/in Doc. No. 110) (lme) (Entered: 02/11/2003)

Vol. 6 Cont'd.

02/10/2003	111	Response by dft William Zachery in opposition to [103-1] motion for clerk to enter default as to Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres and Richard Byrd... (lme) (Entered: 02/11/2003)
02/10/2003	111	MOTION by defendant William Zachery to open default with brief in support. (contained w/in Doc. No. 111) (lme) (Entered: 02/11/2003)
02/10/2003	112	Response by dft John Butkovich in opposition to [103-1] motion for clerk to enter default as to Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres and Richard Byrd... (lme) (Entered: 02/11/2003)
02/10/2003	112	MOTION by defendant John Butkovich to open default with brief in support. (contained w/in Doc. No. 112) (lme) (Entered: 02/11/2003)
02/10/2003	113	Response by dft Richard Byrd in opposition to [103-1] motion for clerk to enter default as to Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres, and Richard Byrd... (lme) (Entered: 02/11/2003)
02/10/2003	113	MOTION by defendant Richard Byrd to open default with brief in support. (contained w/in Doc. No. 113) (lme) (Entered: 02/11/2003)

Vol. 6 Cont'd.

02/10/2003	114	Response by dft Ty Ayres in opposition to [103-1] motion for clerk to enter default as to Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres and Richard Byrd... (lme) (Entered: 02/11/2003)
02/10/2003	114	MOTION by defendant Ty Ayres to open default with brief in support. (contained w/in Doc. No. 114) (lme) (Entered: 02/11/2003)
02/10/2003	115	Response by dft Michael McBride in opposition to [103-1] motion for clerk to enter default as to Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres and Richard Byrd... (lme) (Entered: 02/11/2003)
02/10/2003	115	MOTION by defendant Michael McBride to open default with brief in support. (contained w/in Doc. No. 115) (lme) (Entered: 02/11/2003)
02/13/2003	116	MOTION by dft Richard Byrd to dismiss, or for summary judgment with brief in support. (notice sent to counsel) (lme) (Entered: 02/14/2003)
02/18/2003	117	Plaintiff's opposition to dft Ty Ayers's [105-1] motion to dismiss and [105-2] motion for summary judgment on all causes of action pleaded against him in the second amended complaint. (lme) (Entered: 02/19/2003)

Vol. 6 Cont'd.

02/18/2003	118	Plaintiff's opposition to dft William Zachery's [107-1] mtion to dismiss and [107-2] motion for summary judgment on all causes of action pleaded against him in the second amended complaint. (lme) (Entered: 02/19/2003)
02/18/2003	119	Plaintiff's opposition to dft Michael McBride's [104-1] motion to dismiss and [104-2] motion for summary judgment on all causes of action pleaded against him in the second amended complaint. (lme) Modified on 02/27/2003 (Entered: 02/19/2003)
02/18/2003	120	Plaintiff's opposition to dft John Butkovich's [106-1] motion to dismiss and [106-2] motion for summary judgment on all causes pleaded against him in the second amended complaint. (lme) (Entered: 02/19/2003)
02/18/2003	121	Plaintiff's opposition to dft Wanda Edmundson's [108-1] motion to dismiss and [108-2] motion for summary judgment on all cuases of action pleaded against her in the second amended complaint. (lme) (Entered: 02/19/2003)

02/27/2003		SUBMITTED to Mag Judge Joel M. Feldman on [104-1] motion to dismiss, [104-2] motion for summary judgment on all causes of action pleaded against him in the second amended complaint, [105-2] motion for summary judgment on all causes of action pleaded against him in the second amended complaint, [105-1] motion to dismiss, [106-1] motion to dismiss, [106-2] motion for summary judgment on all causes pleaded against him in the second amended complaint, [107-1] motion to dismiss, [107-2] motion for summary judgment on all causes of action pleaded against him in the second amended complaint, 108-1] motion to dismiss, [108-2] motion for summary judgment on all causes of action pleaded against her in the second amended complaint. (lme) (Entered: 02/27/2003)

Vol. 7

02/28/2003	122	Response by plaintiff in opposition to [114-1] motion to open default. (lme) (Entered: 03/03/2003)
02/28/2003	123	Response by plaintiff in opposition to [111-1] motion to open default. (lme) (Entered: 03/03/2003)
02/28/2003	124	Response by plaintiff in opposition to [110-1] motion to open default. (lme) (Entered: 03/03/2003)

Vol. 7 Cont'd.

02/28/2003	125	Response by plaintiff in opposition to [112-1] motion to open default. (lme) (Entered: 03/03/2003)
02/28/2003	126	Response by plaintiff in opposition to [115-1] motion to open default. (lme) (Entered: 03/03/2003)
02/28/2003	127	MOTION by defendants for sanctions with brief in support. (lme) (Entered: 03/04/2003)
02/28/2003	127	Response by defendants in opposition to pla's [109-1] motion for leave to amend [1-1] complaint. (lme) (Entered: 03/04/2003)
03/06/2003		SUBMITTED to Mag Judge Joel M. Feldman on [110-1] motion to open default, [111-1] motion to open default, [112-1] motion to open default, [114-1] motion to open default, [115-1] motion to open default. (lme) (Entered: 03/06/2003)
03/06/2003		SUBMITTED to Mag Judge Joel M. Feldman on [109-1] motion for leave to amend [1-1] complaint and [113-1] motion to open default. (lme) (Entered: 03/06/2003)

Vol. 7 Cont'd.

03/06/2003	128	Notice to take deposition of Sarah E. Hendrix by defendants. (lme) (Entered: 03/10/2003)
03/07/2003	129	Reply brief to [104-1] motion to dismiss and [104-2] motion for summary judgment on all causes of action pleaded against him in the second amended complaint by defendant Michael McBride. (lme) (Entered: 03/10/2003)
03/07/2003	130	Reply brief to [106-1] motion to dismiss and [106-2] motion for summary judgment on all causes pleaded against him in the second amended complaint by defendant John Butkovich. (lme) (Entered: 03/10/2003)
03/07/2003	131	Reply brief to [108-1] motion to dismiss and [108-2] motion for summary judgment on all causes of action pleaded against her in the second amended complaint by defendant Wanda Edmundson. (lme) (Entered: 03/10/2003)
03/07/2003	132	Reply brief to [107-1] motion to dismiss and [107-2] motion for summary judgment on all causes of action pleaded against him in the second amended complaint by defendant William Zachery. (lme) (Entered: 03/10/2003)

Vol. 7 Cont'd.

03/07/2003	133	Reply brief to [105-1] motion to dismiss and [105-2] motion for summary judgment on all causes of action pleaded against him in the second amended complaint by defendant Ty Ayres. (lme) (Entered: 03/10/2003)
03/10/2003	134	Response by plaintiff in opposition to [116-1] motion to dismiss and [116-2] motion for summary judgment. (lme) (Entered: 03/11/2003)
03/10/2003	135	Reply brief to [113-1] motion to open default by defendant Richard Byrd. (lme) (Entered: 03/11/2003)
03/12/2003		SUBMITTED to Mag Judge Joel M. Feldman on [116-1] motion to dismiss, [116-2] motion for summary judgment. (File in Chambers) (lme) (Entered: 03/12/2003)
03/13/2003	136	Reply brief to [109-1] motion for leave to amend [1-1] complaint by plaintiff. (lme) (Entered: 03/13/2003)

Vol. 8

03/17/2003	137	Reply brief in support of [114-1] motion to open default by defendant Ty Ayres. (lme) (Entered: 03/18/2003)
03/17/2003	138	Reply brief in support of [112-1] motion to open default by defendant John Butkovich . (lme) (Entered: 03/18/2003)

Vol. 8 Cont'd.

03/17/2003	139	Reply brief in support of [110-1] motion to open default by defendant Wanda Edmundson. (lme) (Entered: 03/18/2003)
03/17/2003	140	Reply brief in support of [111-1] motion to open default by defendant William Zachery. (lme) (Entered: 03/18/2003)
03/17/2003	141	Reply brief in support of [115-1] motion to open default by defendant Michael McBride. (lme) (Entered: 03/18/2003)
03/18/2003	142	MOTION by defendants to extend time to complete discovery with brief in support. (lme) (Entered: 03/19/2003)
03/25/2003		SUBMITTED to Mag Judge Joel M. Feldman on [127-1] motion for sanctions. (File in Chambers) (lme) (Entered: 03/25/2003)
03/25/2003	143	ORDER by Mag Judge Joel M. Feldman GRANTING [142-1] motion to extend time to complete discovery. The discovery period in this case is extended and shall end 45 days after the entry of orders resolving pla's third motion to amend complaint, the six pending motions to open default and the six motions by individual capacity dfts to dismiss or for sum jgm. (cc) (lme) (Entered: 03/26/2003)
03/27/2003	144	Reply brief to [116-1] motion to dismiss, [116-2] motion for summary judgment by defendant Richard Byrd . (lme) (Entered: 03/28/2003)

Vol. 8 Cont'd.

06/06/2003	145	ORDER by Mag Judge Joel M. Feldman VACATING the entry of default as the second amended complaint was not properly served and filed on all dfts; GRANTING [110-1] motion open default, GRANTING [111-1] motion to open default, GRANTING [112-1] motion to open default, GRANTING [113-1] motion to open default, GRANTING [114-1] motion to open default, GRANTING [115-1] motion to open default, DENYING [109-1] motion for leave to amend [1-1] complaint by Sarah E. Hendrix. It is furthered ordered that the dfts file their answer or other pleadings to the original and first amended complaints w/in 20 days of the receipt of this Order and the dfts file a statement of atty fees in connection w/their response to the motion for default, the motions to reopen the defaults, and their motion for sanctions w/in 20 days of this date. (cc) (lme) (Entered: 06/10/2003)
06/06/2003		Terminated submissions. (lme) (Entered: 06/10/2003)
06/20/2003	147	ORDER by Mag Judge Joel M. Feldman, GRANTING [104-1, 105-1, 106-1, 107-1, 108-1, 116-1] motions to dismiss, thereby obviating the need to consider sum.jgm. as to each individual defendant (cc) (bsm) (Entered: 07/02/2003)

Vol. 8 Cont'd.

06/27/2003	146	Defendant's ANSWER to amended complaints [71-1] & [12-1]; individual capacity defendants' renewed MOTION to dismiss; and defendants' statement of attorneys' fees incurred to oppose the entry of default (ck) Modified on 06/30/2003 (Entered: 06/30/2003)
06/27/2003	146	Defendants' ANSWER to amended complaints [71-1] & [12-1]; individual capacity defendants' renewed MOTION to dismiss ; and defendants' statment of attorneys' fees incurred to oppose the entry of default . (ck) Modified on 06/30/2003 (Entered: 06/30/2003)
07/02/2003	148	MOTION by plaintiff for reconsideration of [145-1] order with brief in support. (lme) (Entered: 07/07/2003)
07/03/2003		SUBMITTED to Mag Judge Joel M. Feldman on [145-1] order, [146-1] motion individual capacity defendants' renewed MOTION to dismiss, [146-2] motion defendants' statment of attorneys' fees incurred to oppose the entry of default (FILE IN CHAMBERS) (ck) (Entered: 07/03/2003)

07/17/2003	149	Objections by plaintiff to [146-2] motion defendants' statment of attorneys' fees incurred to oppose the entry of default. (lme) (Entered: 07/18/2003)
07/17/2003	150	Objections by plaintiff to [147-1] order. (lme) (Entered: 07/18/2003)
07/18/2003	151	ORDER by Mag Judge Joel M. Feldman GRANTING [146-1] motion individual capacity defendants' renewed MOTION to dismiss. It is further ORDERED that pla respond to [146-2] motion dfts' statement of attys' fees incurred to oppose the entry of default w/in 10 days of this Order, or the same will be considered unopposed, [151-1] order to be submitted on 8/4/03 . (cc) (lme) (Entered: 07/21/2003)
07/18/2003	152	Notice to take deposition of Sarah E. Hendrix by defendant. (lme) (Entered: 07/22/2003)
07/21/2003	153	Response by defendant in opposition to pla's objections to order, identified as [148-1] motion for reconsideration of [145-1] order. (lme) (Entered: 07/22/2003)
07/31/2003		SUBMITTED to Mag Judge Joel M. Feldman on [148-1] motion for reconsideration of [145-1] order. (File in Chambers) (lme) (Entered: 07/31/2003)

Vol. 9 Cont'd.

08/01/2003	154	CONSENT MOTION to extend time to complete discovery with brief in support and proposed order. (To JMF) (lme) (Entered: 08/05/2003)
08/04/2003	155	Response by defendants Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres, Richard Byrd and John W. Snow in opposition to pla's [150-1] objection to Order. (lme) (Entered: 08/05/2003)
08/04/2003	156	Response by defendants Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres, Richard Byrd and John W. Snow in opposition to pla's [149-1] objection to dfts' counsel recitation of fees. (lme) (Entered: 08/05/2003)
08/06/2003		SUBMITTED to Mag Judge Joel M. Feldman on [151-1] order. (File in Chambers) (lme) (Entered: 08/06/2003)
08/20/2003	157	Reply brief to dft's [156-1] response in opposition to pla's objection to dft's recitation of fees by pla. (lme) (Entered: 08/21/2003)
08/20/2003	158	Pla's Reply brief to dft's [155-1] response in opposition to pla's objection to order. (lme) (Entered: 08/21/2003)

Vol. 9 Cont'd.

09/03/2003	159	ORDER by Mag Judge Joel M. Feldman GRANTING [154-1] motion to extend time to complete discovery. Discovery shall be extended 45 days after entry of orders resolving pla's mtn to amend complaint, the six motions to open default, & the 6 motions to dismiss or for summary judgment. (cc) (ck) (Entered: 09/04/2003)
09/03/2003	160	ORDER by Mag Judge Joel M. Feldman DENYING [148-1] motion for reconsideration of [145-1] order by Sarah E. Hendrix. (cc) (lme) (Entered: 09/05/2003)
09/04/2003	161	ORDER by Mag Judge Joel M. Feldman GRANTING IN PART [127-1] motion for sanctions by dfts, as to pla's counsel only. Dfts shall w/in 10 days of their receipt of this Order, file an affidavit setting out their costs and atty's fees, and shall submit a copy of the costs and time sheets and hourly atty fees value to pla. This Court will schedule an evidentiary hearing so that pla's counsel can cross-examine defense counsel about said costs and atty's fees, [161-1] order to be submitted on 9/22/03 . (cc) (lme) Modified on 09/25/2003 (Entered: 09/08/2003)
09/22/2003	162	Objections by plaintiff to [145-1] order and [160-1] order. (lme) (Entered: 09/23/2003)

09/22/2003	163	NOTICE OF APPEAL to District Court by movant W. Darrin Keaton to Judge Feldman's [161-1] order. (lme) (Entered: 09/23/2003)
09/25/2003		SUBMITTED to Judge Richard W. Story on [163-1] Magistrate appeal. (File in Chambers) (lme) (Entered: 09/25/2003)
10/17/2003		SUBMITTED to Judge Richard W. Story on [150-1] objections and [162-1] objections. (lme) (Entered: 10/17/2003)
03/29/2004	164	ORDER by Judge Richard W. Story DIRECTING the Clerk to amend the docket to remove [146-2] as a pending motion. (cc) (lme) (Entered: 04/09/2004)
04/09/2004		Terminated submission. (lme) (Entered: 04/09/2004)

Vol. 10 Cont'd.

07/30/2004	165	ORDER VACATING magistrate orders 145 and 147 to the extent that they conflict with this order. GRANTING 109 motion to amend complaint, pla may file her third amended complaint w/in 10 days of entry of order. Dfts' previous motions to dismiss, 104, 105, 106, 107 and 108 are DENIED with the right to refile. Dfts should file answers or motions to dismiss w/in 20 days of service of third amended complaint. DENYING 127 motion for sanctions. Pla shall have 20 days from entry to perfect service on all dfts. Discovery ends on 9/19/2004 and motions for sum jgm will be due 20 days threafter. Signed by Judge Richard W. Story on 7/30/04. (fmm) (Entered: 08/05/2004)
08/11/2004	166	NOTICE to Take Deposition of SARAH E. HENDRIX filed by Robert E. Rubin (epm) (Entered: 08/17/2004)
08/11/2004	167	CERTIFICATE OF SERVICE as to service of Dft's Second Set of Interrogatories to Pla; and Dft's Second Requests for Production of Documents to Pla filed by Robert E. Rubin (Attachments: # 1 Certificate of Service)(epm) (Entered: 08/17/2004)
08/13/2004	168	PLAINTIFF'S THIRD AMENDMENT TO COMPLAINT against all defendants, filed by Sarah E. Hendrix.(epm) (Entered: 08/19/2004)

Vol. 10 Cont'd.

08/13/2004	169	NOTICE of Change of Address for Wayne Darrin Keaton, counsel for Sarah E. Hendrix (epm) (Entered: 08/19/2004)
08/13/2004	170	Summons Issued as to Ty Ayres, John Butkovich, Richard Byrd, Wanda Edmundson, Michael McBride, William Zachery and U. S. Attorney. (epm) (Entered: 08/19/2004)
08/20/2004	171	Return of Service Executed by Sarah E. Hendrix. Wanda Edmundson served on 8/13/2004, answer due 9/2/2004. (epm) (Entered: 08/27/2004)
08/20/2004	172	Return of Service Executed by Sarah E. Hendrix. Ty Ayres served on 8/13/2004, answer due 9/2/2004. (epm) (Entered: 08/27/2004)
08/20/2004	173	Return of Service Executed by Sarah E. Hendrix. U. S. Attorney served via certified mail on 8/13/04. (epm) (Entered: 08/27/2004)
08/20/2004	174	Return of Service Unexecuted by Sarah E. Hendrix as to William Zachery. (epm) (Entered: 08/27/2004)
08/20/2004	175	Return of Service Executed by Sarah E. Hendrix. Michael McBride served on 8/18/2004, answer due 9/7/2004. (epm) (Entered: 08/27/2004)
08/20/2004		NOTICE OF DOCKET CORRECTION re: 174 Return of Service Executed by Sarah E. Hendrix. William Zachery served on 8/18/2004, answer due 9/7/2004. (dfb) (Entered: 09/07/2004)

Vol. 10 Cont'd.

08/23/2004	176	Return of Service Executed by Sarah E. Hendrix. Richard Byrd served on 8/22/2004, answer due 9/13/2004. (epm) (Entered: 08/30/2004)
08/23/2004	177	Return of Service Executed by Sarah E. Hendrix. John Butkovich served on 8/22/2004, answer due 9/13/2004. (epm) (Entered: 08/30/2004)
09/03/2004	178	NOTICE to Take Deposition of JOHN BUTKOVICH filed by Sarah E. Hendrix (epm) (Entered: 09/10/2004)
09/03/2004	179	NOTICE to Take Deposition of TYRONE AYERS filed by Sarah E. Hendrix (epm) (Entered: 09/10/2004)
09/03/2004	180	NOTICE to Take Deposition of RICHARD BYRD filed by Sarah E. Hendrix (epm) (Entered: 09/10/2004)
09/03/2004	181	NOTICE to Take Deposition of WANDA Edmundson filed by Sarah E. Hendrix (epm) (Entered: 09/10/2004)
09/03/2004	182	NOTICE to Take Deposition of MICHAEL MCBRIDE filed by Sarah E. Hendrix (epm) (Entered: 09/10/2004)
09/03/2004	183	NOTICE to Take Deposition of WILLIAM ZACHERY filed by Sarah E. Hendrix (epm) (Entered: 09/10/2004)

Vol. 10 Cont'd.

09/03/2004	185	NOTICE Of Filing Subpoena In A Civil Case for: Don Dolan, Carin Baswell, Caryn Teamer, Rosa Wright & Ted Stewart, Esq. filed by Sarah E. Hendrix (Attachments: #1 Re: Carin Baswell #2 Re: Caryn Teamer #3 Re: Rosa Wright #4 Re: Ted Stewart, Esq.)(epm) (Entered: 09/13/2004)
09/07/2004	184	ORDER directing parties to appear before the Court re: 165 Order, Status Conference set for 9/8/2004 at 1:30 PM before Judge Joel M. Feldman. Signed by Judge Joel M. Feldman on 9/7/2004. (cc by Magistrate) (adg) (Entered: 09/10/2004)
09/08/2004	186	NOTICE to Take Deposition of SARAH E. HENDRIX filed by defendant. (epm) (Entered: 09/13/2004)
09/08/2004	187	CERTIFICATES OF SERVICE (to Atty/G John Ashcroft & US/Atty David Powell) as to service of 7/30/04 Order; Original Complaint; 1st Amend to Complaint, 2nd Amend to Complaint, 3rd Amend to Complaint, Summons for all 7 Dfts & Instructions Regarding Pretrial Proceedings filed by Sarah E. Hendrix (Attachments: # 1 Certificate #2) (epm) (Entered: 09/13/2004)

Vol. 10 Cont'd.

09/08/2004	188	Minute Entry for proceedings held before Judge Joel M. Feldman : Status Conference held on 9/8/2004. Written Order to follow. (Tape #JMF #04-043 @ 2146.)(epm) (Entered: 09/13/2004)
09/10/2004	189	ORDER directing counsel to request relief he seeks (staying the deposition of a party until such party files his/her Answer or Motion to Dismiss) re: 165 Order from the District Judge. Signed by Judge Joel M. Feldman on 09/10/04. (dfb) (Entered: 09/13/2004)
09/10/2004		Steno Notes of proceedings held on 9/8/04 before Judge Joel M. Feldman as to Robert E. Rubin; by Donna Keeble (epm) (Entered: 09/30/2004)
09/13/2004	190	ANSWER to Second & Third Amended Complaints and All Amendments filed by Wanda Edmundson.(epm) (Entered: 09/16/2004)
09/13/2004	191	ANSWER to Third Amended Complaint and All Amendments filed by John Butkovich.(epm) (Entered: 09/16/2004)
09/13/2004	192	ANSWER to Second & Third Amended Complaints and All Amendments filed by Michael McBride.(epm) (Entered: 09/16/2004)
09/13/2004	193	ANSWER to Third Amended Complaint and All Amendments filed by William Zachery.(epm) (Entered: 09/16/2004)

Vol. 10 Cont'd.

09/13/2004	194	ANSWER to Second & Third Amended Complaints and All Amendments filed by Ty Ayres.(epm) (Entered: 09/16/2004)
09/13/2004	195	ANSWER to Third Amended Complaint and All Amendments filed by Richard Byrd.(epm) (Entered: 09/16/2004)
09/13/2004	196	ANSWER to Third Amended Complaint and All Amendments filed by (Secretary Snow) Robert E. Rubin.(epm) (Entered: 09/16/2004)
09/14/2004	197	MOTION for Extension of Time to 10/20/04 to Complete Discovery w/ Memorandum of Law & Proposed Order filed by (John Snow) Robert E. Rubin. (epm) (Entered: 09/16/2004)
09/14/2004	198	CERTIFICATE OF SERVICE as to service of 197 MOTION for Extension of Time filed by (John Snow) Robert E. Rubin (epm) (Entered: 09/16/2004)

Vol. 11

09/23/2004	199	NOTICE Of Filing Subpoenas to: Ted Stewart, Carin Baswell, Rosa Wright, Don Dolan & Caryn Teamer by Sarah E. Hendrix (Attachments: #1 Subpoena – Carin Baswell #2 Subpoena – Rosa Wright #3 Don Dolan# 4 Subpoena – Caryn Teamer) (epm) (Entered: 09/28/2004)

Vol. 11 Cont'd.

09/23/2004	200	CERTIFICATE OF SERVICE of Discovery filed by Sarah E. Hendrix (epm) (Entered: 09/28/2004)
09/23/2004	201	LOCAL RULE 5.4(A) CERTIFICATES (Of Service of Discovery Pleadings) filed by Sarah E. Hendrix (Attachments: #1 Certificate – Plaintiff's Response) (epm) (Entered: 09/28/2004)
09/27/2004		Mail Returned as Undeliverable. (Re: Order of 9/10/04) Mail sent to Gordon Joseph Rose (epm) (Entered: 09/29/2004)
10/04/2004	202	ORDER granting Defendants' 197 Motion for Extension of Time to Complete Discovery. Discovery ends on 10/28/2004. Parties may file motions for summary judgment up to thirty (30) days after the close of discovery. The responding party may have up to 30 days to respond and a reply may be filed up to 10 days after service of the response. Motions for summary judgment shall be submitted directly to the undersigned. Signed by Judge Richard W. Story on 10/04/04. (dfb) (Entered: 10/04/2004)
10/04/2004		Case no longer referred to Joel M. Feldman. (dfb) (Entered: 10/06/2004)

Vol. 11 Cont'd.

10/04/2004	203	Minute Entry for proceedings held before Judge Richard W. Story: Telephone Conference held on 10/4/2004 re: Defendants' 197 Motion for Enlargement of Time. (Court Reporter Donna Keeble) (dfb) (Entered: 10/12/2004)
10/12/2004		Mail Returned as Undeliverable. (Re: Order of 10/4/04) Mail sent to Gordon Joseph Rose (epm) (Entered: 10/13/2004)
10/21/2004	204	CERTIFICATE OF SERVICE as to service of Affidavit of Michelle Filippou, filed by process server, Michelle Filippou. (epm) (Entered: 10/22/2004)
11/02/2004	205	NOTICE of Substitution of United States as Defendant for Tort Claims against Individual Capacity Defendants with Certifications filed by United States (Attachments: #1 Certifications) (epm) (Entered: 11/05/2004)
11/23/2004	206	RESPONSE to 205 Notice of Substitution of United States as Defendant for Tort Claim Against Individual Defendants filed by Sarah E. Hendrix. (Memorandum in Support and Exhibits 1 – 5 included in pleading) (epm) Modified to correct text on 11/29/2004 (epm). (Entered: 11/29/2004)

Vol. 11 Cont'd.

11/23/2004 **Located in Vol. 12**	214	MOTION for Hearing and/or MOTION for De Novo Review of Defendants' Notice of Substitution of United States as Defendant for Tort Claim and MOTION for Sanctions pursuant to 28 U.S.C. 1927 with Memorandum in Support filed by Sarah E. Hendrix. (Motion contained within pleading 206) (epm) Modified to correct text on 11/29/2004 (epm). Modified on 12/17/2004 to attach pdf and correct docket text (fmm). (Entered: 11/29/2004)
11/24/2004	207	MOTION to Dismiss or for MOTION for Summary Judgment with Memorandum In Support, Statement of Undisputed Facts and Exhibits filed by United States. (Attachments: #1 Memorandum of Law in Support #2 Statement of Undisputed Facts #3 Exhibit 1 #4 Exhibit 2 #5 Exhibit 3 #6 Exhibit 3 – part 2 #7 Exhibit 3 – part 3 #8 Exhibit 3 – part 4 #9 Exhibit 4 – part 1 #10 Exhibit 4 – part 2 #11 Exhibit 4 – part 3 #12 Exhibit 4 – part 4 #13 Exhibit 4 – part 5) (epm) (Entered: 11/30/2004)

11/26/2004	209	MOTION for Summary Judgment with Memorandum In Support and Statement of Undisputed Facts filed by John W. Snow. (Attachments: #1 Memorandum of Law in Support #2 Statement of Undisputed Facts) (epm) (Entered: 12/06/2004)
11/26/2004 **with Exhibits**	211	MOTION for Summary Judgment, Brief In Support, Statement of Undisputed Facts and 4 volumes of Exhibits filed by Ty Ayres, John Butkovich, Richard Byrd, Wanda Edmundson, Michael McBride and William Zachery. (Exhibits too voluminous to scan; please see file) (Attachments: #1 Memorandum of Law in Support #2 Statement of Undisputed Facts) (epm) Modified to correct text to include exhibits on 12/6/2004 (epm). (Entered: 12/06/2004)
11/30/2004	208	Clerk's Notice to Parties to Respond to Motion for Summary Judgment re: 207 MOTION to Dismiss or MOTION for Summary Judgment (epm) (Entered: 11/30/2004)
12/06/2004	210	Clerk's Notice to Parties to Respond to Motion for Summary Judgment re: 209 MOTION for Summary Judgment by John W. Snow (epm) (Entered: 12/06/2004)

Vol. 12 Cont'd.

12/06/2004	212	Clerk's Notice to Parties to Respond to Motion for Summary Judgment re: 211 MOTION for Summary Judgment (epm) (Entered: 12/06/2004)
12/09/2004	213	MEMORANDUM in Opposition to 214 MOTION for Hearing and/or MOTION for De Novo Review of Defendants' Notice or Substitution of U. S. as Defendant for Tort Claim against Individual Defendants and MOTION for Sanctions pursuant to 28 U.S.C. 1927 filed by United States, John W. Snow. (epm) Modified on 12/17/2004 to correct docket text (fmm). (Entered: 12/14/2004)
12/17/2004		Submission of 205 Notice of Substitution of United States as Defendant for Tort Claims against Individual Capacity Defendants, 214 MOTION for Hearing, MOTION De Novo Review, MOTION for Sanctions, submitted to District Judge Richard W. Story. (fmm) Modified on 12/17/2004 to correct docket text (fmm). (Entered: 12/17/2004)

Vol. 12 Cont'd.

12/22/2004	215	REPLY to Response to 214 MOTION for Hearing for Judicial Review of Substitution of United States as Defendant for Tort Claim Against Individual Defendants and MOTION for Sanctions filed by Sarah E. Hendrix. (Attachments: #1 Exhibit 1 #2 Exhibit 2 #3 Exhibit 3 #4 Exhibit 4) (epm) (Entered: 12/30/2004)

Vol. 13

01/07/2005	216	NOTICE Of Filing Original Discovery Documents filed by Sarah E. Hendrix (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	217	DEPOSITION of TYRONE B. AYERS taken on 10/14/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	218	DEPOSITION of CARIN AMY BRAZWELL taken on 10/27/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	219	DEPOSITION of JOHN BUTKOVICH taken on 10/14/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	220	DEPOSITION of JOSEPH E. BUTLER taken on 9/18/98 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	221	DEPOSITION of JOE BUTLER taken on 11/13/98 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)

Vol. 13 Cont'd.

01/07/2005 **Exhibit**	222	DEPOSITION of RICHARD BYRD taken on 10/12/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	223	DEPOSITION of DONALD RANDALL DOLAN taken on 10/12/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	224	DEPOSITION of WANDA Edmundson taken on 11/13/98 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	225	DEPOSITION of WANDA EDMUNDSON taken on 10/12/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	226	DEPOSITION of DEBORAH ANN GONZALES taken on 11/13/98 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	227	DEPOSITION of EDWARD C. LAUDUSKI taken on 11/12/98 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	228	DEPOSITION of JOSEPH ANTONIO MASTRACCHIO taken on 11/12/98 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	229	DEPOSITION of JOSEPH A. MASTRICCHIO taken on 9/18/98 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)

Vol. 13 Cont'd.

01/07/2005 **Exhibit**	230	DEPOSITION of PAUL MAYBERRY taken on 11/13/98 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	231	DEPOSITION of MICHAEL MCBRIDE taken on 10/12/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	232	DEPOSITION of DOROTHY V. POOLE taken on 9/18/98 filed by Sarah E. Hendrix.(epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	233	DEPOSITION of THEODORE M. STEWART taken on 10/14/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	234	DEPOSITION of CAREY TEAMER taken on 10/27/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	235	DEPOSITION of BRIAN A. WORD taken on 11/12/98 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	236	DEPOSITION of ROSA WRIGHT taken on 10/14/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005 **Exhibit**	237	DEPOSITION of WILLIAM THOMAS ZACHERY taken on 10/27/04 filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)

Vol. 13 Cont'd.

01/07/2005 **with Exhibits**	238	RESPONSE in Opposition to 207 MOTION to Dismiss; MOTION for Summary Judgment filed by Sarah E. Hendrix; (3 volumnes of exhibits attached; too voluminous to scann) filed by Sarah E. Hendrix. (epm) Modified to correct text on 1/13/2005 (epm). (Entered: 01/13/2005)

Vol. 14

01/07/2005	239	RESPONSE in Opposition to 209 MOTION for Summary Judgment filed by Sarah E. Hendrix; (volumes of exhibits attached w doc 238; too voluminous to scann). (epm) Modified on 6/8/2005 to correct exhibit information (ckd). (Entered: 01/13/2005)
01/07/2005	240	RESPONSE in Opposition to 211 MOTION for Summary Judgment filed by Sarah E. Hendrix; (volumes of exhibits attached w doc 238; too voluminous to scann). (epm) Modified on 6/8/2005 to correct exhibit information(ckd). (Entered: 01/13/2005)
01/07/2005	241	RESPONSE to 207 Statement of Material Facts Not In Dispute filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)

Vol. 14 Cont'd.

01/07/2005	242	RESPONSE to 209 Statement of Material Facts Not In Dispute filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005	243	RESPONSE to 211 Statement of Material Facts Not In Dispute filed by Sarah E. Hendrix. (epm) (Entered: 01/13/2005)
01/07/2005	244	CERTIFICATE OF COMPLIANCE filed by Sarah E. Hendrix (epm) (Entered: 01/13/2005)
01/14/2005	245	ORDER granting 214 Motion for Hearing, granting 214 Motion for De Novo Review and denying 214 Motion for Sanctions Evidentiary Hearing set for 2/2/2005 02:30 PM in Courtroom 2105 before Judge Richard W. Story. Signed by Judge Richard W. Story on 1/14/05. (epm) (Entered: 01/19/2005)
01/18/2005		Submission of 211 MOTION for Summary Judgment, 207 MOTION to Dismiss, MOTION for Summary Judgment 209 MOTION for Summary Judgment, submitted to District Judge Richard W. Story. (epm) (Entered: 01/18/2005)

Vol. 14 Cont'd.

01/25/2005	246	MOTION to Strike 223 Deposition, 224 Deposition, 225 Deposition, 226 Deposition, 241 Response to Motion, 227 Deposition, 242 Response to Motion, 243 Response to Motion, 228 Deposition, 229 Deposition, 230 Deposition, 231 Deposition, 232 Deposition, 244 Certificate of Service, 216 Notice of Filing, 233 Deposition, 217 Deposition, 234 Deposition, 235 Deposition, 236 Deposition, 237 Deposition, 218 Deposition, 219 Deposition, 220 Deposition, 221 Deposition, 238 Response in Opposition to Motion, 222 Deposition, 239 Response in Opposition to Motion, 240 Response in Opposition to Motion with Brief In Support by Wanda Edmundson, Michael McBride, United States, John W. Snow, John Butkovich, William Zachery, Ty Ayres, Richard Byrd. (Powell, Robert) (Entered: 01/25/2005)
02/09/2005	247	Minute Entry for proceedings held before Judge Richard W. Story: Evidentiary Hearing held on 2/8/2005. (Court Reporter Sharon Upchurch.)(rag) (Entered: 02/09/2005)

Vol. 14 Cont'd.

02/09/2005	248	RESPONSE to 246 MOTION to Strike Plaintiff's Documents filed January 7, 2005, filed by Sarah E. Hendrix (Attachments: #1 Exhibit 1 #2 Exhibit 2 #3 Exhibit 3 #4 Exhibit 4 #5 Exhibit 5 #6 Exhibit 6) (epm) (Entered: 02/10/2005)
02/11/2005		Steno Notes of proceedings held on 2/8/05 as to Wanda Edmundson, Michael McBride, United States, John W. Snow, John Butkovich, William Zachery, Ty Ayres and Richard Byrd before Judge Richard W. Story; by Court Reporter, Sharon D. Upchurch (epm) (Entered: 02/14/2005)
02/14/2005	250	AFFIDAVIT Supplying Additional Information in Response to February 8, 2005 Hearing filed by Sarah E. Hendrix. (Attachments: #1 Affidavit – part 2 #2 affidavit – part 3 #3 Tab 1 #4 Tab 2 #5 Tab 3 #6 Tab 4 #7 Tab 5 #8 Tab 6 #9 Tab 7 #10 Tab 8 #11 Tab 9 #12 Tab 10 #13 Tab 11 #14 Tab 12) (epm) (Entered: 02/17/2005)

Vol. 14 Cont'd.

02/15/2005	249	NOTICE Of Filing by Wanda Edmundson, Michael McBride, John Butkovich, William Zachery, Ty Ayres, Richard Byrd re 213 Response in Opposition to Motion, (Supplemental Evidence) (Attachments: #1 Affidavit Ty Ayers (Part1) #2 Affidavit Ty Ayers(Part2) #3 Affidavit of John Butkovich #4 Affidavit of Richard Byrd #5 Affidavit of Wanda Edmundson #6 Affidavit of Michael McBride # 7Affidavit of William Zachery) (Powell, Robert) (Entered: 02/15/2005)

Vol. 15

02/22/2005	251	ORDER GRANTING 207 United States Motion to Dismiss; GRANTING 207 Motion for Summary Judgment; GRANTING 209 John W. Snow's Motion for Summary Judgment; GRANTING 211 Motion for Summary Judgment and DENYING 246 Motion to Strike. This case is hereby DISMISSED. Signed by Judge Richard W. Story on 2/22/05. (epm) (Entered: 02/23/2005)
02/22/2005	252	CLERK'S JUDGMENT Entered for Defendants and against Plaintiff for costs of action. (epm) – Please refer to http://www.ca11.uscourts.gov to obtain an appeals jurisdiction checklist – (Entered: 02/23/2005)

Vol. 15 Cont'd.

02/22/2005		Civil Case Terminated. (epm) (Entered: 02/23/2005)
02/23/2005	253	AFFIDAVIT Providing Additional Information for the Record filed by Sarah E. Hendrix. (epm) (Entered: 02/25/2005)
03/07/2005 **Vol. 19**	254	TRANSCRIPT of Evidentiary Hearing held on 2/8/05 before Judge Richard W. Story. Court Reporter: Sharon D. Upchurch. (epm) Modified to correct text on 3/9/2005 (epm). (Entered: 03/09/2005)

Vol. 16

03/17/2005	255	BILL OF COSTS filed by Wanda Edmundson, Michael McBride, John W. Snow, John Butkovich, William Zachery, Ty Ayres and Richard Byrd. (epm) (Entered: 03/21/2005)
03/21/2005	256	Costs Taxed in amount of $ 4,025.98 against Sarah Hendrix (epm) Modified on 4/20/2005 (sjk). (---COSTS RE-TAXED 4/19/2005 AS PER 262 ORDER---) (Entered: 03/21/2005)

Vol. 16 Cont'd.

03/21/2005	257	NOTICE OF APPEAL by Sarah E. Hendrix as to 251 Order, 252 Clerk's Judgment. Fee not paid (TOF/Appeal fee letter mailed to attorney for plaintiff) (cc:USCA) Transcript Order Form due on 4/4/2005 (ckd) (Entered: 03/22/2005)
03/22/2005		Transmission of certified copy Notice of Appeal, Judgment, Order, Appeal fee letter and Docket Sheet to US Court of Appeals re: 257 Notice of Appeal (ckd) (Entered: 03/22/2005)
03/22/2005		USCA Appeal Fees received $255 receipt number 534972 re: 257 Notice of Appeal filed by Sarah E. Hendrix, Case Appealed to USCA 11th Circuit (ckd) (Entered: 03/25/2005)
03/25/2005		Certified copy of docket sheet forwarded to USCA reflecting payment of Appeal fees re: 257 Notice of Appeal filed by Sarah E. Hendrix. Case Appealed to USCA 11th Circuit. (ckd) (Entered: 03/25/2005)
03/28/2005	258	USCA Acknowledgment for 257 Notice of Appeal filed by Sarah E. Hendrix, Case Appealed to USCA 11th Circuit Case Number 05-11583-D (ckd) (Entered: 03/29/2005)

Vol. 16 Cont'd.

03/30/2005	259	USCA Acknowledgment certified copy docket sheet reflecting payment of appeal fees re: 257 Notice of Appeal filed by Sarah E. Hendrix, Case Appealed to USCA 11th Circuit Case Number 05-11583-D. (ckd) (Entered: 03/31/2005)
04/04/2005	260	TRANSCRIPT ORDER FORM by Sarah E. Hendrix for proceedings held on 1/14/99 before Judge Joel M. Feldman re: 257 Notice of Appeal, Court Reporter: David Ritchie. Case Appealed to USCA 11th Circuit Case Number 05-11583-D. Financial Arrangements due on 4/18/2005 (ckd) (Entered: 04/05/2005)
04/04/2005	261	OBJECTION to 255 Bill of Costs filed by Sarah E. Hendrix. (Attachments: #1 Exhibit 1, #2 Exhibit 2, #3 Exhibit 3, #4 Exhibit 4, #5 Exhibit 5, #6 Exhibit 6 and #7 Exhibit 7) (sjk) (Entered: 04/05/2005)
04/19/2005	262	ORDER SUSTAINING in part and OVERRULING in part 261 Objection to the Bill of Costs. The Clerk is DIRECTED to retax costs in favor of Defendants in the amount of $3,605.98. Signed by Judge Richard W. Story on 4/19/2005. (sjk) (Entered: 04/20/2005)

Vol. 16 Cont'd.

04/19/2005		Costs Re-taxed in amount of $3,605.98 against Plaintiff and for Defendant. (As directed by 262 Order.) (sjk) (Entered: 04/20/2005)
05/31/2005	263	AFFIDAVIT Notifying Court of Termination of Counsel by Sarah E. Hendrix. (sjk) (Entered: 05/31/2005)
06/08/2005		CERTIFICATE OF READINESS of Appeal Record (15 volumes pleadings; 1 Under Seal; 4 volumes transcripts; 21 depositions; exhibits w/doc 211 and 238) re: 257 Notice of Appeal filed by Sarah E. Hendrix. USCA Case Number 05-11586-DD (ckd) Modified on 6/8/2005 to correct docket text (ckd). (Entered: 06/08/2005)
06/08/2005	264	Certified copy of CERTIFICATE OF READINESS transmitted to USCA re: 257 Notice of Appeal. Case Appealed to USCA Eleventh Circuit Case Number 05-11583-DD (ckd) (Entered: 06/08/2005)
06/13/2005	265	USCA Acknowledgment COR re: 257 Notice of Appeal filed by Sarah E. Hendrix. Case Appealed to USCA Eleventh Circuit Case Number 05-11583-DD. (ckd) (Entered: 06/14/2005)

Vol. 16 Cont'd.

10/13/2005	266	FORTHWITH LETTER from USCA re: 257 Notice of Appeal filed by Sarah E. Hendrix. Case Appealed to USCA Eleventh Circuit Case Number 05-11583-DD. Appeal Record due by 10/24/2005. (ckd) (Entered: 10/13/2005)
10/18/2005	267	Certified and Transmitted Record on Appeal to US Court of Appeals re 257 Notice of Appeal Case Appealed to USCA Eleventh Circuit Case Number 05-11583-DD. (ckd) (Entered: 10/18/2005)
10/25/2005	268	NOTICE of Docketing Record on Appeal from USCA re 257 Notice of Appeal filed by Sarah E. Hendrix,. Case Appealed to USCA Eleventh Circuit Case Number 05-11583-DD. (ckd) (Entered: 10/26/2005)
04/25/2006	269	Certified copy of JUDGMENT of USCA AFFIRMING the decision of the District Court re: 257 Notice of Appeal filed by Sarah E. Hendrix. Case Appealed to USCA - 11th Circuit. Case Number 05-11583-DD. (Attachments: #1 Bill of Costs)(kac) (Entered: 04/26/2006)

04/25/2006		Appeal Record Returned re: 257 Notice of Appeal. Case Appealed to USCA – 11th Circuit. USCA Case Number 05-11583-DD. (15 Vols. of Pldgs-1 FILED UNDER SEAL, 4 Transcripts, 21 Depositions, 4 Vols. of Exhibits w/ pldg no. 211 and 3 Vols. of Exhibits w/ pldg no. 238) (kac) (Entered: 04/26/2006)